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TENDERLOIN HOUSING CLINIC, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON FENNIX, individually, and on
behalf of all others similarly situation,

Plaintiff

v.

TENDERLOIN HOUSING CLINIC, INC.,
a California corporation; and DOES 1
through 10, inclusive

Defendants.

Case No.:

*[Removed from San Francisco Superior Court,
Case No. CGC-20-584834]*

**DEFENDANT TENDERLOIN HOUSING
CLINIC, INC'S NOTICE OF REMOVAL OF
CIVIL ACTION TO U.S. DISTRICT COURT**

[Filed concurrently with:

- 1. Civil Case Cover Sheet;*
- 2. Corporate Disclosure Statement and
Certificate of Interested Persons or Entities;*
- 3. Declaration of Jaime Quijano; and*
- 4. Declaration of Shirley Wang*

Complaint Filed: June 9, 2020

Removal Date: July 29, 2020

**TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO PLAINTIFF
SHARON FENNIX AND HER COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Defendant Tenderloin Housing Clinic, Inc. (“THC”), hereby removes the matter of *Sharon Fennix v. Tenderloin Housing Clinic, Inc.* pending in the Superior Court of the State of California in and for the County of San Francisco, Case No. CGC-20-584834, to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446.

Removal is proper because this is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, as it is an action arising under federal law. Specifically, as set forth in more detail below, this action is preempted by Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 141 *et seq.*, because it is based on rights created by and requires interpretation of a collective bargaining agreement, which governs the terms and conditions of Plaintiff’s employment. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. § 1441(a) and (c). The following is a short and plain statement of the grounds for removal pursuant to 28 U.S.C. § 1446(a).

I. PROCEDURAL BACKGROUND

1. On January 9, 2020, Plaintiff Sharon Fennix (“Plaintiff”), individually and on behalf of all persons similarly situated, filed a complaint in the Superior Court of California, County of San Francisco, Case No. CGC-20-584834 (“the Complaint”). The Summons and Complaint, and all other materials served on THC in this matter, and all documents on the docket in the state court action, are attached as Exhibit 1 to the Declaration of Shirley Wang in Support of Defendant Tenderloin Housing Clinic, Inc.’s Notice of Removal of Civil Action to U.S. District Court (“Wang Decl.”)

2. In the Complaint Plaintiff asserts the following causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices. Wang Decl., Ex. 1, Complaint.

3. Plaintiff's Complaint implicates federal law because the terms and conditions of Plaintiff's employment were subject to a Collective Bargaining Agreement between THC and the Service Employees International Union, CTW Local 1021 effective from July 1, 2017 through June 30, 2020 (the "CBA"). A true and correct copy of the CBA is attached as Exhibit 1 to the Declaration of Jaime Quijano in Support of Defendant Tenderloin Housing Clinic, Inc.'s Notice of Removal of Civil Action to U.S. District Court ("Quijano Decl.")

4. Plaintiff worked for THC from on or about October 3, 2018 until on or about September 30, 2019. Quijano Decl. ¶ 3. The CBA was in effect for this entire period of time. *Id.*, Ex. 1. Thus, the terms and conditions of Plaintiff's employment were at all relevant times subject to the CBA between TCH and Service Employees International Union, CTW Local 1021. *Id.*

5. The Union is a labor organization within the meaning of Section 2(5) of the NLRA and Section 301(a) of the LMRA, 29 U.S.C. §§ 152(5) and 185(a).

6. THC is an employer within the meaning of the LMRA, 29 U.S.C. § 152(2).

7. Article 1 of the CBA specifically states that the Union is the Exclusive bargaining representative for the covered employees. Quijano Decl., Ex. 1, Article 1.

II. TIMELINESS OF REMOVAL

8. On June 29, 2020, THC was served with the Summons, Complaint, Civil Cover Sheet, Application for Complex Designation, Notice of Case Management Conference and ADR Information Package. Wang Decl. ¶ 2, Ex. 1.

9. To THC's knowledge, the Summons, Complaint, Civil Cover Sheet, Application for Complex Designation, Notice of Case Management Conference, ADR Information Package, and Proof of Service attached as Exhibit 1 to the Wang Declaration constitute all of the state court pleadings filed in the state court action to date.

10. Defendants "DOES 1 to 10, inclusive" have not been identified, nor is there any record of service of any documents associated with the State Court Action on the Doe Defendants.

11. This removal is timely filed as required by 28 U.S.C. § 1446(b), having been accomplished within 30 days of the date of first service of the state court action on THC, which occurred on June 29, 2020.

III. FEDERAL QUESTION JURISDICTION BASED ON THE LABOR MANAGEMENT RELATIONS ACT

12. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by THC pursuant to the provisions of 28 U.S.C. §1441, in that the relief sought in the Complaint arises under and is preempted by Section 301 of the LMRA. 29 U.S.C. § 185. The LMRA grants federal district courts subject matter jurisdiction over claims involving the interpretation of “contracts between an employer and a labor organization.” 29U.S.C. § 185(a); *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007) (if the claim requires the Court to interpret a CBA or is “substantially dependent on analysis of a collective bargaining agreement,” the claim is preempted, even if based on state law) (emphasis added). “The preemptive force of Section 301 is so powerful as to displace entirely any state claim based on a collective bargaining agreement, and any state claim whose outcome depends on analysis of the terms of the agreement.” *Young v. Anthony Fish Grottos, Inc.*, 830 F.2d 993, 997 (9th Cir. 1987). As set forth below, the LMRA confers federal subject matter jurisdiction over this action because Plaintiff’s claims arise from the CBA between THC and Plaintiff’s union, and the resolution of those claims requires interpretation of the CBA. The CBA sets forth policies regarding the payment of overtime and overtime hourly rates, the provision of meal and rest periods, the reimbursement of business expenses, the timing of the payment of wages, wage rates, a mandatory grievance procedure and arbitration clause, and other terms and conditions of the Plaintiff’s and Class Members’ employment with THC. Plaintiff’s claims place the terms of the CBA squarely at issue and are, therefore, preempted by the LMRA.

A. The LMRA Preempts Claims That Either (1) Arise From a Labor Agreement, or (2) Require Substantial Interpretation of a Labor Agreement.

13. The Ninth Circuit has clarified that the LMRA preempts claims in two respects. First, if the claim involves a right that exists because of the CBA rather than state law, the “claim is preempted and [the court’s] analysis ends there.” *Burnside*, 491 F.3d at 1059. Second, if the claim requires the Court to interpret a CBA or is “substantially dependent on analysis of a collective-bargaining agreement,” the claim is preempted, even if based on state law. *Id.*

14. Although the language of LMRA Section 301 is limited to “suits for violation of contracts,” it has been construed quite broadly to cover state-law actions that do not allege a breach of the CBA, but nonetheless require interpretation of labor agreements. *Allis Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) (“[W]hen resolution of a state law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, or dismissed as preempted by federal labor-contract law.”) (internal citations omitted) (emphasis added); *see also Paige v. Henry J. Kaiser Co.*, 826 F.2d 857, 861 (9th Cir. 2001) (when resolution of a claim brought under state law is “substantially dependent on analysis” of a collective-bargaining agreement, the claim is preempted by Section 301) (citing *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394 (1987)); *Hyles v. Mensing*, 849 F.2d 1213, 1215-1216 (9th Cir. 1988); *Young*, 830 F.2d at 997, 999; *Raphael v. Tesoro Refining & Marketing Co., LLC*, No. 2:15-cv-02862-ODW (Ex), 2015 WL 3970293, *6-7 (C.D. Cal. June 30, 2015) (“To further the goal of uniform interpretation of labor contracts, the preemptive effect of § 301 has been extended beyond suits that allege the violation of a collective bargaining agreement... [a] state law claim will be preempted if it is so ‘inextricably intertwined’ with the terms of a labor contract that its resolution will require judicial interpiion of those terms.”) (citing *Allis Chalmers Corp.* 471 U.S. at 210-11) (emphasis added).

**1. Plaintiff’s Claims Are Based Upon – And Arise From – the CBA, and
Therefore are Preempted Under the First *Burnside* Prong.**

15. The Service Employees International Union, CTW Local 1021, represents THC’s employees (the “Union”). Quijano Decl. ¶ 3, Ex. 1, Article 1. Plaintiff was, at all relevant times, a THC employee – a Case Manager - represented by the Union, and the terms and conditions of her employment were governed by the CBA between THC and the Union. *Id.*

16. As set forth below, the CBA between THC and the Union specifically addresses, *inter alia*, (1) the employees’ rates of pay, the payment of overtime, and the overtime rates, (2) the employees’ entitlement to take meal and rest periods, the manner in which the meal and rest periods are authorized and permitted, (3) the timing of THC’s payment of wages to employees, and (4) THC’s reimbursement of employee expenses. The CBA also includes a grievance and binding arbitration procedure which is the exclusive forum for resolution of the claims Plaintiff alleged in the Complaint.

17. The CBA includes the following provisions, in relevant part, regarding wages, hours, the hourly overtime rate, meal breaks, and the payment of wages:

ARTICLE 13. OVERTIME/COMPENSATORY TIME

Each position with THC will be classified as non-exempt or exempt and this designation will be made clear to Employees at the time of hiring.

Section 1. Non-Exempt Employees

All Employees covered by this CBA who are employed in a non-exempt capacity (as defined in the requirements of the Federal Fair Labor Standards Act and the California Labor Code) will be paid overtime at the rate of one and one-half (1-1/2) times the Employee's regular rate of pay for all hours worked in excess of thirty seven and a half (37.5) hours in one week (workweek is defined as Sunday through Saturday) and for the first four and a half hours (4.5) in excess of seven and a half (7.5) in a single work day. Any hours in excess of the times indicated, will be paid in accordance with California's Overtime Law (FLSA).

Employees must receive advanced approval from their direct supervisor or the department director prior to any overtime. See Article 5, Section 1 and 2 of the CBA for definition of workweek and workday.

- A. Overtime at two (2) times the regular wage is paid for all hours worked in excess of twelve (12) in one workday.
- B. Part-time Employees shall not be required to work beyond their normal weekly schedule and there shall be no threat of negative consequences from their supervisor for not accepting additional hours.
- C. Employees must have prior approval from their immediate supervisor before working any overtime.

....

APPENDIX A THC Bargaining Unit Classification and Rate of Pay Sheet

Job Title	Starting Hourly Pay Rate	Annualized Rate @ 1950 hours per year
Case Manager – Master Lease	\$20.1751	\$39,341.43
Case Manager – Shelter + Care + VASH	\$21.2133	\$41,365.93

....

ARTICLE 7. WORK SCHEDULE

Section 1. Workweek

The workweek is from 12:01 AM Sunday to 12:00 AM Midnight Saturday

Section 2. Workday

The universal workday is a 24-hour period beginning at 12:01 AM and ending at 12:00 AM midnight each calendar day. The normal workday shift is a seven and a half (7.5) hour period with a forty (40) minute meal break.

....

Section 5. Breaks

.... Meal breaks are forty (40) minutes. Thirty (30) minutes is unpaid and ten (10) minutes is paid of the forty (40) minute meal break.

Coverage:

i. For Employees who work in a “public customer service position” (i.e. Desk Clerks and Administrative Staff) and cannot abandon their post, if two (2) Employees are scheduled to work a shift, one covers the desk while the other takes their meal and rest periods. If only one (1) person is scheduled for the front desk, but a peer staff (janitor, maintenance, associate) is on duty, the peer staff is responsible for covering the front desk while the Employee is on their meal break or rest period.

ii. If only one (1) person is scheduled for the “public customer service position” and no peer staff is on duty, but a manager is, the manager is responsible for identifying the person to cover the desk while the Employee is on their meal break or rest period.

Section 6. Payday

All Employees will be paid bi-weekly (every other Friday). If the payday falls on an observed Holiday, paychecks will be issued on the previous business day. The Employer will make every effort to issue all checks no later than 12:00pm. If payment is delayed past 12:00pm members will be allowed a thirty (30) minute paid release time to go to their bank. All check stubs will exhibit up to date accrued vacation and sick hours.

Section 7. Alternative Work Schedules

The parties agree, subject to California State Law, to consider alternative work schedules that improve effectiveness of the workforce and the delivery of service.

Quijano Decl., Ex. 1.

18. The grievance and binding arbitration provision of the CBA provides:

ARTICLE 6. GRIEVANCE PROCEDURE

Section 1. Discipline And Contract Interpretation

In the event a dispute arises with reference to the interpretation or enforcement of this CBA, the following procedure shall be followed, provided that the matter be presented to grievance within five (5) business days for discipline and ten (10) business days for issues involving interpretation or application of this CBA, otherwise the right of grievance is lost. The purpose of the procedure set forth below is to provide the Employer, the Employees, and the Union an orderly means of resolving disputes, which may arise between them. NOTE: Special Expedited Procedure Applies to Terminations.

Section 2. Grievance Defined

A grievance is a claim by an Employee or the Union concerning the interpretation or application of this CBA. The written, formal grievance shall contain a clear, brief statement of the issue, the date of the violation, the section(s) of the CBA allegedly violated, the proposed remedy, and shall be signed by the aggrieved party. The aggrieved party shall have the right to representation by a Shop Steward and/or Union Field Representative at each step of the grievance procedure.

Examples of Grievable and Non-Grievable Issues:

Grievable:

- Terminations after 90 day probationary period
- Demotions or salary reductions
- Suspensions without pay
- Violations of state, federal or local law, including violations of health and safety codes
- Breach of terms of the contract

Non-grievable

- Terminations during 90 day probationary period
- Disciplinary actions other than those cited above (e.g. written or verbal warnings not resulting in a consequence).
 - o If, however, a written or verbal warning is subsequently introduced in a disciplinary action "with consequences" any and all written or verbal warnings in the personnel file shall be subject to the grievance procedure.
 - o Written warnings must be completed on a form that permits the Employee to sign the document with the condition "I acknowledge receipt of this written warning but do not necessarily agree with the facts or the discipline."
 - o Employees shall be given a copy of all disciplinary warnings
 - o Employees may attach a rebuttal to any warning, which will be included in the personnel file. Failure to offer a rebuttal does not waive any legal rights.
- Voluntary resignations, including Employees who do not show up for work and do not follow the proper call in procedures for three consecutive days ("no call, no show")

Section 3. Procedure

When an Employee has a problem they inform their supervisor, with or without the assistance of a Shop Steward and/or Union Field Representative, and attempts to resolve the problem informally by discussing the issue.

Step 1. If there has been no informal resolution of the dispute by the Employee and the Employee's supervisor, the next step to address the grievance is for the Employee to submit a written statement of the grievance to the Human Resources Director. It is the Human Resources Director's responsibility to supply a copy of the grievance to the Department Director or Designee; to respond in writing within ten (10) business days after receipt to the Union and Employee who filed the grievance.

Step 2. If the grievance is not satisfactorily resolved or if no answer is given within the time specified in Step 1, the Union Shop Steward or the Employee who filed the grievance may contact the Deputy Director or their designee in writing to request a meeting to hear the grievance within five (5) business after the start of the Step 2 process. The Deputy Director or their designee shall reply to the grievance within ten (10) business days following such meeting.

Step 3. If the grievance is not satisfactorily resolved in Step 2, or if no answer is given within the time specified in Step 2, the Union may, by written notice to the Executive Director within five (5) business days for discipline or discharge and in ten (10) business days for issues involving interpretation or application of the CBA after the Step 2 response, or on the last day which the answer was due if none was given, requests that the grievance be heard by the Executive Director or his/her designee within five (5) business days after receipt of the notice. The Employer shall reply to the grievance within ten (10) business days after the Step 3 grievance meeting.

Step 4. If, within ten (10) business days following the Step 3 grievance meeting the grievance is not satisfactorily resolved, or if no answer is given within the time specified, the Union may request for final and binding arbitration. The parties will attempt to agree upon an impartial arbitrator. In the event the parties are unable to agree upon an impartial arbitrator, then either party may request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) within fifteen (15) business days of the notice requesting arbitration to select an arbitrator to hear and resolve the grievance. The parties shall flip a coin to determine which party will strike first name from the panel, and then shall proceed. The arbitrator selected shall hear the grievance as soon as possible.

The Parties may agree to utilize FMCS for mediation prior to, or as an alternative to, arbitration.

The expenses of the arbitration shall be shared by the parties. Each party shall bear the cost of its own representatives and witnesses. The arbitrator selected shall not have the authority or jurisdiction to add to, subtract from, change, alter or modify any of the terms of this contract. The decision of the Arbitrator shall be final and binding upon the parties.

The time limits listed in the grievance procedure may be extended by mutual written agreement between the parties.

Section 4. Expedited Arbitration

By mutual agreement the Union and the Employer may agree to utilize the following expedited arbitration procedure. The arbitrator shall be selected in the regular manner or may be a mediator from the FMCS sitting as an arbitrator.

- 1) All efforts shall be made prior to the hearing to stipulate to the facts and the evidence to the record;
- 2) No attorneys shall be used. However the parties shall have the right to other representation;
- 3) There shall be no stenographic record of the proceedings;
- 4) Only oral closing arguments shall be used; no briefs will be permitted to be filed;
- 5) Only a bench decision shall be required. The arbitrator may write a one page decision if mutually requested by the parties.

Quijano Decl., Ex. 1.

19. Plaintiff's Overtime Claim. Plaintiff's overtime claim is preempted under the statutory overtime laws. "Section 514 of the Cal. Labor Code states that the statutory overtime provisions of § 510 do not apply to an employee who is covered by a valid CBA which expressly provides for the (1)

wages, (2) hours of work, (3) working conditions, (4) premium wage rates for all overtime hours, and (5) regular hourly wage, not less than 30% greater than the state minimum wage. Cal. Labor Code § 514.” *Marquez v. Toll Glob. Forwarding (USA) Inc.*, No. 218CV03054ODWASX, 2018 WL 3218102, at *2 (C.D. Cal. June 28, 2018) (dismissing with prejudice plaintiff’s claim that plaintiff worked in excess of eight hours per day and forty hours per week without receiving overtime pursuant to Labor Code § 510 because the requirements of Labor Code § 514 were met); *accord Vranish v. Exxon Mobil Corp.*, 223 Cal. App. 4th 103, 107 (2014); *Curtis v. Irwin Indus.*, 913 F.3d 1146, 1153-54 (9th Cir. 2019).

20. In the instant case, each of the requirements of Labor Code § 514 have been satisfied. It is undisputed that Plaintiff was a non-exempt employee. Plaintiff’s employment with THC was covered by the CBA, which expressly provides for the employees’ (1) wages, (2) hours of work, (3) working conditions, and for (4) premium wage rates for all overtime hours. *See* Quijano Decl. ¶ 3, Ex. 1, Articles 7-24, Appendix A. Additionally, pursuant to the CBA, Plaintiff was paid an hourly rate that was more than 30% greater than the state minimum wage of \$11.00 and \$12.00 per hour that was in effect during Plaintiff’s employment with THC. *Id.*, Ex. 1, Appendix A. When, as in the instant case, the applicable CBA meets the requirements of Labor Code § 514, the right to overtime exists solely as a result of the CBA and LMRA preemption applies. Accordingly, because the CBA meets the requirements of Labor Code § 514, Plaintiff’s overtime claim is preempted by the LMRA.

21. Plaintiff’s Untimely Payment of Wages Claim. Plaintiff’s untimely payment of wages claim pursuant to Labor Code § 204 is also preempted. Labor Code § 204(c) provides that “when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees,” rather than the provisions of subsections (a) and (b). Labor Code § 204; *see also Bradford v. Profl Tech. Sec. Servs. Inc. (Protech)*, No. 20-CV-02242-WHO, 2020 WL 2747767, at *4 (N.D. Cal. May 27, 2020); *Landy v. Pettigrew Crewing, Inc.*, No. 219CV07474RGKAFM, 2019 WL 6245525, at *5 (C.D. Cal. Nov. 22, 2019). Thus, the language of § 204(c) makes clear that employers need not comply with Labor Code § 204’s timing requirements if a collective bargaining agreement creates a different payment arrangement, as is the case here. The CBA expressly sets forth payment arrangements in Article 7, Section 6, addressing the timing of wage

1 payments, which differ from the requirements of § 204.1. Quijano Decl., Ex. 1, Article 7, Section 6.
 2 The CBA provides for the biweekly payment of wages (Quijano Decl, Ex. 1, Article 7, Section 6),
 3 whereas Labor Code § 204 provides for the semimonthly payment of wages. The CBA provides for
 4 different payment arrangements – people paid on a biweekly basis are paid 26 times per year, whereas
 5 people who are paid semimonthly are paid 24 times per year. Moreover, the CBA sets forth additional
 6 requirements regarding the payment of wages not found in Labor Code § 204. *See* Quijano Decl.,
 7 Ex. 1, Article 7, Section 6.

8 22. Because Article 7, Section 6 of the CBA provides for different arrangements for the
 9 timing and frequency of wage payments, which themselves must be interpreted and analyzed, Plaintiff's
 10 claim for violation of Labor Code § 204 is wholly preempted by Section 301 of the LMRA.

11 23. Plaintiff's Meal Period Claim. Labor Code § 512(e) provides for exemption from the
 12 meal period requirements of Labor Code Section 512(a) when both of the following conditions are
 13 satisfied: (1) the employee is covered by a valid collective bargaining agreement; (2) the valid
 14 collective bargaining agreement expressly provides for the wages, hours of work, and working
 15 conditions of employees, and expressly provides for meal periods for those employees, final and
 16 binding arbitration of disputes concerning application of its meal period provisions, premium wage
 17 rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more
 18 than the state minimum wage rate. When the Labor Code Section 512(e) exemption applies, a meal
 19 period claim pursuant to Labor Code Section 512(a) is statutorily barred. *Marquez v. Toll Glob.*
 20 *Forwarding*, 804 F. App'x 679, 680 (9th Cir. 2020); *Araquistain v. Pac. Gas & Elec. Co.*, 229 Cal.
 21 App. 4th 227, 236-38 (2014). As a result, the meal period claim exists only pursuant to the CBA and is
 22 therefore preempted by the LMRA under the first prong of the *Burnside* test. *Marquez*, 804 F. App'x at
 23 680; *Araquistain*, 229 Cal. App. 4th at 236-38.

24 24. In holding that the Labor Code Section 512(e) exemption applied, the court in
 25 *Araquistain* reasoned that “[i]t appears to us that when employees, represented by a labor union, ‘have
 26 sought and received alternative wage protections through the collective bargaining process, they are
 27 free to bargain over the terms of their meal period, including whether the meal period will be of a
 28

1 specified length and whether employees will be relieved of all duty during that time.” *Araquistain*,
 2 229 Cal. App. 4th at 236-38 (internal quotations, citations omitted).

3 25. Regarding meal periods, in the instant case the CBA provides for a normal work day
 4 shift of 7.5 hours with a 40 minute meal break, 30 minutes of which is unpaid while 10 minutes is paid.
 5 Quijano Decl., Ex. 1, Article 7, Sections 2, 5. The CBA does not provide when the meal break should
 6 be taken. *Id.*, Article 7, Section 5.

7 26. In the instant case, the CBA provides for a more generous meal break than that required
 8 under Labor Code § 512(a) given that it provides employees with a 40 meal minute break as opposed to
 9 the 30 minute meal break required under Labor Code § 512(a), and that 10 minutes are paid whereas the
 10 meal break required under Labor Code § 512(a) is unpaid. Like in *Araquistain*, in the instant case
 11 employees, represented by a labor union, sought and received alternative wage protections through the
 12 collective bargaining process, and should be free to bargain over the terms of their meal period. Thus,
 13 although Plaintiff does not fall within any of the employee categories setout in Labor Code § 512(f), the
 14 CBA should be enforced and Plaintiff’s Labor Code § 512 meal period claim should be preempted
 15 under the first prong of *Burnside*.

16 27. In sum, Plaintiff’s state law claims for unpaid overtime under Labor Code § 510, for
 17 untimely payment of wages under Labor Code § 204, and for failure to provide compliant meal periods
 18 and/or premium pay under Labor Code § 512 are preempted by Section 301 under the first prong of
 19 *Burnside*, and this matter is properly removable pursuant to 28 U.S.C. § 1441. *See Coria v. Recology*,
 20 *Inc.*, 63 F. Supp.3d 1093, 1099 (N.D. Cal. 2014) (holding that plaintiffs meal period and overtime
 21 claims arise under the CBA and are preempted by the LMRA because the Labor Code Sections 512(e)
 22 and 514 exemptions were met); *Mireles v. Paragon Sys.*, Civ. No. 13-cv-122 L (BGS), 2014 WL
 23 4385453, at *6 (S.D. Cal. Sept. 4, 2014) (finding LMRA preemption after determining Labor Code
 24 §§ 512(e) and 514 exemptions were met); *Bradford*, No. 20-CV-02242-WHO, 2020 WL 2747767, at
 25 *4.

1 **2. Plaintiff's Claims are Preempted Under the Second *Burnside* Prong Because**
 2 **they Require Interpretation of the CBA.**

3 28. Under the second *Burnside* prong, Plaintiff's claims are preempted by the LMRA
 4 because they require interpretation of the CBA provisions regarding THC's authorization of meal and
 5 rest breaks and expense reimbursement. Plaintiff's claims place the terms of these CBAs squarely at
 6 issue. As demonstrated below, resolving the parties' disputes is "substantially dependent" on the
 7 interpretation of the CBA. *Burnside*, 491 F.3d at 1059-60; *Rafael v. Tesoro Refining and Marketing*
 8 *Company LLC*, Civ. No. 15-02862-ODW(Ex), 2015 U.S. Dist. LEXIS 85191 at *16-17 (C.D. Cal. June
 9 30, 2015) (finding LMRA preemption because the Court would need to interpret CBAs to determine
 10 whether the Labor Code 512(e) and 514 exemptions apply); *Firestone v. Southern Calif Gas Co.*, 219
 11 F.3d 1063, 1066 (9th Cir. 2000).

12 29. Plaintiff's Meal and Rest Period Claims. Plaintiff's meal and rest period claims are
 13 preempted under the second *Burnside* prong. Plaintiff alleges that THC wrongfully failed to provide
 14 Plaintiff and the Class with legally compliant meal periods. Wang Decl., Ex. 1, Complaint ¶ 16. THC
 15 regularly required Plaintiff and the Class to work in excess of five consecutive hours a day without
 16 providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of
 17 work, or without compensating Plaintiff and the Class for meal periods that were not provided by the
 18 end of the fifth hour of work or tenth hour of work. *Id.* THC did not adequately inform Plaintiff and
 19 the Class of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater
 20 than 10 hours, by the end of the tenth hour of work. *Id.* Moreover, THC did not have adequate written
 21 policies or practices providing meal periods for Plaintiff and the Class, nor did THC have have adequate
 22 written policies or practices regarding the timing of meal periods. *Id.*

23 30. Plaintiff also alleges that THC wrongfully failed to authorize and permit Plaintiff and the
 24 Class to take timely and duty-free rest periods. Wang Decl., Ex. 1, Complaint ¶ 17. THC regularly
 25 required Plaintiff and the Class to work in excess of four consecutive hours a day without THC
 26 authorizing and permitting them to take a 10-minute, continuous and uninterrupted rest period for every
 27 four hours of work, or major fraction thereof, or without compensating Plaintiff and the Class for rest
 28 periods that were not authorized or permitted. *Id.* Indeed, THC required Plaintiff and the Class to work

1 in lieu of taking 10-minute, paid, duty-free rest periods because there was too much work to do. *Id.*
 2 THC also did not adequately inform Plaintiff and the Class of their right to take a rest period. *Id.* THC
 3 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the
 4 Class, nor did THC have adequate policies or practices regarding the timing of rest periods. *Id.* THC
 5 also did not have adequate policies or practices to verify whether Plaintiff and the Class were taking
 6 their required rest periods. *Id.* THC did not maintain accurate records of employee work periods, and
 7 therefore THC cannot demonstrate that Plaintiff and the Class took rest periods during the middle of
 8 each work period. *Id.*

9 31. In *Marquez*, the court found that the plaintiff's meal and rest break claims failed under
 10 the second *Burnside* prong because they required interpretation of the CBA. *Marquez v. Toll Glob.*
 11 *Forwarding (USA) Inc.*, No. 218CV03054ODWASX, 2018 WL 3218102, at *3 (C.D. Cal. June 28,
 12 2018), *aff'd sub nom. Marquez v. Toll Glob. Forwarding*, 804 F. App'x 679 (9th Cir. 2020) (affirming
 13 preemption of rest break claim under second *Burnside* prong and finding preemption of meal break
 14 claim under first *Burnside* prong without reaching second *Burnside* prong). The court reasoned:

15 The meal and rest break provision of the CBA 'permits' employees to take 'any and all
 16 meal and rest periods that the Employee is entitled to by law.' As Defendants point out,
 17 the CBA does not obligate the employer to provide breaks, and it is not entirely clear
 18 what it means to "permit" an employee to take a break. Furthermore, Plaintiff alleges
 19 Defendants scheduled employees in a way that failed to reasonably ensure they could
 20 take meal breaks, and failed to implement a relief system so that they could take rest
 breaks. Therefore, adjudication of these claims will require analysis of Defendants'
 scheduling policies, combined with analysis of what it means under the CBA to 'permit'
 an employee to take a break. Namely the question will hinge on how exactly defendants'
 policies prevented employees from taking the breaks they were permitted

21 *Marquez*, No. 218CV03054ODWASX, 2018 WL 3218102, at *3 (internal citations omitted).

22 32. Similarly, in the instant case, the meal and rest period provision of the CBA "permits"
 23 employees to take meal and rest periods. *See Quijano Decl.*, Ex. 1, Article 7, Section 5. Like in
 24 *Marquez*, it is not entirely clear what the term "permit" means. The Court will be required to interpret
 25 the meaning of the term "permit" in the CBA. Additionally, the CBA includes provisions regarding the
 26 timing and/or duration of meal and rest periods that the Court will be required to interpret. *Id.*, Ex. 1
 27 Article 7, Sections 2, 5. Analysis of whether or not Plaintiff and other Class Members worked in a
 28 "public customer service position" under the CBA and the impact of the rules on whether or not they

1 were provided with lawful meal and rest breaks will be necessary. *Id.*, Ex. 1 Article 7, Section 5.
 2 Accordingly, Plaintiff's meal and rest period claims are preempted under the second *Burnside* prong.

3 33. Plaintiff's Expense Reimbursement Claim. Plaintiff alleges that THC required Plaintiff
 4 and the Class to pay expenses that they incurred in direct discharge of their duties for THC without
 5 reimbursement. Wang Decl., Ex. 1, Complaint ¶ 18. This included use of their own vehicles, which
 6 mileage and any other related expenses were not reimbursed. *Id.* Plaintiff and the Class incurred these
 7 substantial expenses as a direct result of performing their job duties for THC, and THC has failed to
 8 indemnify Plaintiff and the Class for these employment-related expenses. *Id.*

9 34. The CBA provides the following regarding the reimbursement of business expenses:

10
 11 In the event an Employee is required, due to staffing needs, to work at a facility other
 12 than their designated facility, they shall be given not less than one and one-half (1 1/2)
 13 hours notification. In the event notification is less than one and one-half (1 1/2) hours,
 14 THC shall reimburse any additional cost the Employee incurs in traveling between their
 15 designated facility and the facility they are assigned to cover. The reimbursement costs
 16 must be outside of the Employees' normal travel and the Employee is responsible for
 17 following THC's reimbursement policy to request reimbursement.

18 Quijano Decl, Ex. 1, Article 7, Section 4.

- 19 A. The Employer may allow Employees to attend, during normal working hours,
 20 approved workshops, seminars, conferences and training sessions, which are work-
 21 related. The following shall be paid by the Employer: fees for workshops, seminars,
 22 conferences, and training sessions, public transportation costs and/or mileage at the
 23 current IRS rate, parking costs and toll charges.
- 24 B. In accordance with the current practice, any Employee who is approved for
 25 Employer initiated external training will continue to receive their regular wages for
 26 the time spent in the training.

27 Quijano Decl, Ex. 1, Article 14, Section 6, A, B.

28 Some Tenderloin Housing Clinic (THC) employees may be required to use cellular
 phones based on the needs and requirements of their position. Any employee required to
 have and use their personal cellular phone will be reimbursed at a standard rate. For
 positions that require the use of a personal cellular phone for phone calls, texts, and
 emails on a smart phone device, the employee shall receive up to a sixty nine dollar
 (\$69.00) reimbursement per month. For positions that require the use of personal cellular
 phone for calls and texts only, the employee will receive up to a thirty six dollar (\$36.00)
 reimbursement per month. The reimbursement will be included on the employee's first
 paycheck of the following month.

Quijano Decl, Ex. 1, Article 12, Section 4.

Plaintiff's expense reimbursement claim is preempted because resolving it would require substantial interpretation of the CBA. *See Linebarger v. Graphic Packaging Int'l, LLC*, No. SACV2000309JVSJDEX, 2020 WL 1934958, at *6 (C.D. Cal. Apr. 22, 2020) (holding that expense reimbursement claim was preempted under the second prong of the *Burnside* test because interpretation of expense reimbursement provision of CBA would be required to resolve expense reimbursement claim). For example, resolving Plaintiff's expense reimbursement claim would require interpretation of what work-related means regarding trainings, conferences, and workshops. *See Quijano Decl.*, Ex. 1, Article 14, Section 6, A. It would also require interpretation of the employee's designated facility and notification. *See Id.*, Ex. 1, Article 7, Section 4. The CBA also provides that employees approved for external training will continue to receive their regular wages for the time spent in training. *See Id.*, Ex. 1, Article 14, Section 6, B. The meaning of regular wages requires interpretation under the CBA. Accordingly, Plaintiff's expense reimbursement claim is preempted under the second *Burnside* prong.

IV. SUPPLEMENTAL JURISDICTION

35. Plaintiff's claims either depend upon, and/or require interpretation of, the collective bargaining agreements, and thus arise under Section 301. The alleged wage statement, waiting time, Labor Code § 204, and unfair and unlawful business practices act claims are all derivative of the underlying overtime, meal and rest break, and expense reimbursement claims. To the extent, however, that there are remaining claims for relief that are not completely preempted by Section 301, these claims are within the supplemental jurisdiction of this Court under 29 U.S.C. § 1367(a), in that they are so related to the Section 301 claims that they form part of the same case or controversy under Article III of the United States Constitution. In the alternative, any such other claims for relief are separate and independent claims which are properly removable to this Court pursuant to 28 U.S.C. § 1441(c).

V. VENUE

36. Venue lies in the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 84(a) and 1441(a) because this Court's territorial jurisdiction includes San Francisco County, California, where the state court action was filed and is pending.

37. THC will serve written notice of the filing of this Notice of Removal on Plaintiff as required by 28 U.S.C. § 1446(d) and will file a Notice of Removal with the clerk of the Superior Court of California, County of San Francisco, as further required by that statute.

VI. PRAYER FOR REMOVAL


38. WHEREFORE, THC respectfully requests that these proceedings, now pending in the Superior Court of the State of California in and for San Francisco County, be removed to this Court.

VII. CONCLUSION

Defendant THC respectfully requests that this action be removed to this Court from the Superior Court of the State of California, County of San Francisco. Should the Court be inclined to remand this action, THC respectfully requests the Court first issue an order to show cause as to why the case should not be remanded, as an order remanding a case to state court is not reviewable. *See* 28 U.S.C. § 1447(d).

Dated: July 29, 2020

DAVIS WANG

By: 
 Shirley C. Wang
 Attorneys for Defendant Tenderloin Housing Clinic,
 Inc.

Davis Wang

A Professional Law Corporation

625 Market Street, 12th Floor, San Francisco, CA 94105 • Telephone: (415) 278-1400 • Facsimile: (415) 278-1401

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

SHARON FENNIX, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Kane Moon, Allen Feghali/Moon & Yang, APC
1055 W. Seventh St., Suite 1880, Los Angeles, CA 90017
(213) 232-3125

DEFENDANTS

TENDERLOIN HOUSING CLINIC, INC., a California corporation; and DOES 1 through 10, inclusive

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Shirley Wang/Davis Wang
625 Market St., 12th Floor, San Francisco, CA 94104
(415) 278-1422

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff

☒ 3 Federal Question *(U.S. Government Not a Party)*

☐ 2 U.S. Government Defendant

☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<div>110 Insurance</div> <div>120 Marine</div> <div>130 Miller Act</div> <div>140 Negotiable Instrument</div> <div>150 Recovery of Overpayment Of Veteran's Benefits</div> <div>151 Medicare Act</div> <div>152 Recovery of Defaulted Student Loans (Excludes Veterans)</div> <div>153 Recovery of Overpayment of Veteran's Benefits</div> <div>160 Stockholders' Suits</div> <div>190 Other Contract</div> <div>195 Contract Product Liability</div> <div>196 Franchise</div> <div>REAL PROPERTY</div> <div>210 Land Condemnation</div> <div>220 Foreclosure</div> <div>230 Rent Lease & Ejectment</div> <div>240 Torts to Land</div> <div>245 Tort Product Liability</div> <div>290 All Other Real Property</div>	<div>PERSONAL INJURY</div> <div>310 Airplane</div> <div>315 Airplane Product Liability</div> <div>320 Assault, Libel & Slander</div> <div>330 Federal Employers' Liability</div> <div>340 Marine</div> <div>345 Marine Product Liability</div> <div>350 Motor Vehicle</div> <div>355 Motor Vehicle Product Liability</div> <div>360 Other Personal Injury</div> <div>362 Personal Injury -Medical Malpractice</div> <div>CIVIL RIGHTS</div> <div>440 Other Civil Rights</div> <div>441 Voting</div> <div>442 Employment</div> <div>443 Housing/ Accommodations</div> <div>445 Amer. w/Disabilities-- Employment</div> <div>446 Amer. w/Disabilities--Other</div> <div>448 Education</div> <div>PERSONAL INJURY</div> <div>365 Personal Injury -- Product Liability</div> <div>367 Health Care/ Pharmaceutical Personal Injury Product Liability</div> <div>368 Asbestos Personal Injury Product Liability</div> <div>PERSONAL PROPERTY</div> <div>370 Other Fraud</div> <div>371 Truth in Lending</div> <div>380 Other Personal Property Damage</div> <div>385 Property Damage Product Liability</div> <div>PRISONER PETITIONS</div> <div>HABEAS CORPUS</div> <div>463 Alien Detainee</div> <div>510 Motions to Vacate Sentence</div> <div>530 General</div> <div>535 Death Penalty</div> <div>OTHER</div> <div>540 Mandamus & Other</div> <div>550 Civil Rights</div> <div>555 Prison Condition</div> <div>560 Civil Detainee-- Conditions of Confinement</div>	<div>625 Drug Related Seizure of Property 21 USC § 881</div> <div>690 Other</div> <div>LABOR</div> <div>710 Fair Labor Standards Act</div> <div><input checked="" type="checkbox"/> 720 Labor/Management Relations</div> <div>740 Railway Labor Act</div> <div>751 Family and Medical Leave Act</div> <div>790 Other Labor Litigation</div> <div>791 Employee Retirement Income Security Act</div> <div>IMMIGRATION</div> <div>462 Naturalization Application</div> <div>465 Other Immigration Actions</div>	<div>422 Appeal 28 USC § 158</div> <div>423 Withdrawal 28 USC § 157</div> <div>PROPERTY RIGHTS</div> <div>820 Copyrights</div> <div>830 Patent</div> <div>835 Patent--Abbreviated New Drug Application</div> <div>840 Trademark</div> <div>SOCIAL SECURITY</div> <div>861 HIA (1395ff)</div> <div>862 Black Lung (923)</div> <div>863 DIWC/DIWW (405(g))</div> <div>864 SSID Title XVI</div> <div>865 RSI (405(g))</div> <div>FEDERAL TAX SUITS</div> <div>870 Taxes (U.S. Plaintiff or Defendant)</div> <div>871 IRS--Third Party 26 USC § 7609</div>	<div>375 False Claims Act</div> <div>376 Qui Tam (31 USC § 3729(a))</div> <div>400 State Reapportionment</div> <div>410 Antitrust</div> <div>430 Banks and Banking</div> <div>450 Commerce</div> <div>460 Deportation</div> <div>470 Racketeer Influenced & Corrupt Organizations</div> <div>480 Consumer Credit</div> <div>485 Telephone Consumer Protection Act</div> <div>490 Cable/Sat TV</div> <div>850 Securities/Commodities/ Exchange</div> <div>890 Other Statutory Actions</div> <div>891 Agricultural Acts</div> <div>893 Environmental Matters</div> <div>895 Freedom of Information Act</div> <div>896 Arbitration</div> <div>899 Administrative Procedure Act/Review or Appeal of Agency Decision</div> <div>950 Constitutionality of State Statutes</div>

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding

☒ 2 Removed from State Court

☐ 3 Remanded from Appellate Court

☐ 4 Reinstated or Reopened

☐ 5 Transferred from Another District *(specify)*

☐ 6 Multidistrict Litigation--Transfer

☐ 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
Labor Management Relations Act of 1947 (29 U.S.C. 185)
Brief description of cause:
Plaintiff brings claims for various wage and hour violations which concern a collective bargaining agreement.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. ☐ DEMAND \$ ☐
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S), IF ANY *(See instructions):*
JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) ☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE ☐ EUREKA-MCKINLEYVILLE

DATE 07/29/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Shirley C. Wang

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
 - (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”

Date and Attorney Signature. Date and sign the civil cover sheet.

1 SHIRLEY C. WANG (SBN 187635)
 swang@daviswanglaw.com
 2 DAVIS WANG
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 3 San Francisco, California 94105
 Telephone: (415) 278-1400
 4 Facsimile: (415) 278-1401

5 Attorneys for Defendant
 TENDERLOIN HOUSING CLINIC, INC.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

10 SHARON FENNIX, individually, and on
 behalf of all others similarly situated,

12 Plaintiff

13 v.

14 TENDERLOIN HOUSING CLINIC, INC.,
 a California corporation; and DOES 1
 15 through 10, inclusive

16 Defendants.

Case No.:

[Removed from San Francisco Superior Court,
 Case No. CGC-20-584834]

**DECLARATION OF JAIME QUIJANO IN
 SUPPORT OF DEFENDANT TENDERLOIN
 HOUSING CLINIC, INC'S NOTICE OF
 REMOVAL OF CIVIL ACTION TO U.S.
 DISTRICT COURT**

Complaint Filed: June 9, 2020

1 **DECLARATION OF JAIME QUIJANO**

2 I, Jaime Quijano, declare as follows:

3 1. I am employed by Tenderloin Housing Clinic, Inc. ("THC") as the Director of Human
4 Resources. I have worked in this position since 2015. I make this declaration in support of Defendant
5 THC's Notice of Removal of civil action to U.S. District Court. This declaration is based on my
6 personal knowledge and upon my review of business records that are generated and/or maintained by
7 THC in the ordinary course and scope of business. If called and sworn as a witness, I would truthfully
8 testify thereto under oath.

9 2. As part of my job duties as the Director of Human Resources, I have access to, and am
10 familiar with, business records, data, and other information related to THC's employment of Plaintiff
11 Sharon Fennix and THC's other current and former employees. These records are created and
12 maintained by THC in the course of its regularly-conducted business activities, according to THC's
13 regular practices.

14 3. Based on my review of business records maintained by THC in the ordinary course of
15 business, Sharon Fennix worked as a Case Manager for THC from on or about October 3, 2018 until on
16 or about September 30, 2019. During the time she was employed by THC, Ms. Fennix was a member
17 of the Service Employees International Union, CTW Local 1021 ("Union") – the union that represents
18 THC's employees - and worked for THC pursuant to a collective bargaining agreement ("CBA") agreed
19 to by the Union and THC. The CBA was in effect from July 1, 2017 until June 30, 2020. A true and
20 correct copy of the CBA is attached hereto as **Exhibit 1**.

21 4. Due to the coronavirus pandemic the Union and THC have agreed that the CBA will
22 remain in effect until later this year when we expect to negotiate a new collective bargaining agreement.
23 Based on prior discussions and past practices I expect that the terms of the new collective bargaining
24 agreement will be substantially similar to the terms of the CBA.

25 I declare under penalty of perjury under the laws of the United States of America and the State
26 of California that the foregoing is true and correct. Executed this 28th day of July, 2020 in San
27 Francisco, California.

28 By: 

Jaime Quijano

EXHIBIT 1

COLLECTIVE BARGAINING AGREEMENT (CBA)

LOCAL 1021

Between

TENDERLOIN HOUSING CLINIC

and the

LOCAL 1021

**SERVICE EMPLOYEES INTERNATIONAL
UNION, CTW**

SEIU

Stronger Together

July 1, 2017 through June 30, 2020

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COLLECTIVE BARGAINING AGREEMENT (CBA)
By and Between
Tenderloin Housing Clinic and Service Employees International Union, Local 1021

This CBA is entered into this FIRST day of July 2017 by and between the Tenderloin Housing Clinic (THC), (hereafter called the "Employer") and Service Employees International Union (SEIU), Local 1021 (hereafter called the "Union".)

ARTICLE 1. RECOGNITION

The Employer recognizes the Union as the exclusive collective bargaining representative for Employees in the classifications referenced in the THC Bargaining Unit Classification and Rate of Pay Sheet of this CBA. The Union was recognized following a card check procedure held at the Employer's offices on March 14, 2006.

ARTICLE 2. UNION SECURITY

Section 1.

It shall be a condition of employment for Employees hired by the Employer after the execution of this CBA and who are covered by this CBA, to either: a) become and remain, members of the Union in good standing, or b) commence and continue payment to the Union of an equivalent service fee. This requirement must be satisfied not later than the thirty-first (31st) day following commencement of employment. Management will distribute and collect Union enrollment forms when collecting other forms for new Employees.

Section 2. Conscientious Objections

Notwithstanding any provision of this Article, any Employee hired subsequent to the effective date of this CBA who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting Unions shall be exempt from the Union membership and/or equivalent service fee requirements of this Article provided however, that such an Employee shall be required, in lieu of compliance with this Article, to pay sums equal to the regular Union dues to any of the three charitable funds listed below that are exempt from taxation under Section 501 c (3) of the Internal Revenue Code:

1. St. Anthony's Dining Room
2. Coleman Advocates for Children
3. Project Open Hand

Proof of such payment shall be made by the Employee to the Union on a monthly basis.

Members in good standing shall be defined as employed members of the Union who tender periodic dues and initiation fees uniformly required by the Union as a condition of acquiring or retaining membership. Service fee payment shall not exceed the standard initiation fee and periodic dues uniformly required of Union members for representation on matter of wages, hours, and other terms and conditions of employment.

Section 3. Dues Deductions / Other Deductions

The periodic Union dues, fees, and other assessments will be deducted from the Employee's paycheck upon submission to the Employer of a properly written authorization by the Employee. Other assessments include, but are not necessarily limited to, periodic payments to the Committee On Political Education (COPE).

Section 4. Dues Delinquency

The Employer, upon written request by certified mail from the Union, shall discharge any Employee within five (5) business days after receipt of such notice that fails to comply with the terms of this Article.

Section 5. Hold Harmless

The Union shall indemnify and hold the Employer harmless from any and all claims, suits or other actions arising from the Article or complying with any request for termination of employment under this Article.

Section 6. Notification

The Employer shall supply the Union with names, addresses, classifications and work program of Employees hired or terminated within fifteen (15) business days of their hiring or termination by email to the person named by the Union. Upon written request from the Union and at least once a calendar year, the Employer will provide a hard copy and by email to the Union with names, addresses, telephone numbers, last four (4) digits of social security numbers, classifications, and work program of Employees covered under this CBA.

The Union may request additional reports as needed but no more frequently than two times per year. Such reports will be supplied electronically to the Union Field Representative or their designee.

ARTICLE 3. DISCRIMINATION**Section 1. Equal Opportunity**

The Employer, the Union, and the Employees agree that all Employees and applicants for employment are entitled to fair and equitable treatment and employment opportunities in aspects of Employer-Employee relationships, discipline, pregnancy, promotion, transfer, layoff, recall, and veteran's status, without regard to race, ancestry, color, religion, sex, national origin, age, sexual orientation, gender identity, marital status, physical or mental impairment, Union activity, or political affiliation.

Section 2. Sexual Harassment

The Employer, the Union and the Employees agree, that an Employee or applicant for employment shall not be the subject of sexual harassment. The Fair Employment and Housing regulations define sexual harassment as unwanted sexual advances, or visual, verbal or physical contact of a sexual nature when such conduct is made explicitly or implicitly a term or condition of employment, is used as a basis of employment decisions, or has the effect of interfering with work performance or creating an otherwise offensive working environment.

Employees who are aware of any violation of either law or this policy should immediately report the circumstances to the Tenderloin Housing Clinic Department Director, Human Resources or Executive Director. If an investigation confirms the offense, immediate disciplinary action, up to suspension without pay and including termination of employment, will be taken.

ARTICLE 4. UNION SHOP STEWARDS & REPRESENTATION

Section 1. Official Representatives

- A. The Union will notify the Employer in writing of the duly authorized Union Field Representative. The duly authorized representative of the Union will be permitted reasonable access for the purpose of seeing that the terms and conditions of the CBA are being observed. The Union Field Representative will exercise this right in a reasonable manner and will not disrupt the operation of the Employer
- B. There shall be one Shop Steward and one alternate in each facility owned or operated by the Employer. The Union shall supply the names, work locations, and hours of work of each Shop Steward and alternate to the Employer in writing.
- C. The Parties recognize that it is the responsibility of the Shop Steward to assist in the resolution of grievances at the lowest possible level. The Shop Stewards may advise Employees of their rights, responsibilities, and options under this CBA, but shall not assume the role of supervisor.
- D. Upon notification of an appropriate management person, Shop Stewards and designated officers of the Union subject to management approval, which shall not be unreasonably withheld, shall be granted reasonable release time to investigate and process grievances and represent fellow Employees in investigatory interviews conducted by the Employer.
- E. Shop Stewards shall not interfere with the work of any Employee. A Shop Steward may interview an Employee during the Employee's work time in order to investigate or process a grievance and disciplinary appeal with the prior notification, approval and coordination of the Employee's supervisor, which shall not be unreasonably withheld.
- F. Any meeting of a Shop Steward and supervisor shall be held in private surroundings and shall be held in a quiet and dignified manner.
- G. When there is no Shop Steward at a particular location any other Shop Steward, preferably the geographically closest, will act as the Shop Steward for the location.
- H. Bulletin Boards. The Employer agrees to provide space on an existing bulletin board at each work location covered by this CBA or if not available, allocate space which the Union may use to post notices of official Union business as it pertains to the Employees of Tenderloin Housing Clinic. The Union bulletin board or space shall be located in a staff-oriented area. The space provided will be maintained by the Union. The Union assumes all responsibility for the material contained in its notices and the postings shall be official correspondence from the Union.

Section 2. Shop Steward Training

All authorized Shop Stewards shall be allowed eight (8) hours paid release time quarterly to attend Union Shop Steward training and Union contract seminars conducted by the SEIU. The 8 hours paid release time may be taken in part or in full, however, should a Shop Steward attend a whole day training for 8 hours, the Employer will only pay their regular work schedule that day, i.e. 7.5 hours. Employer must be notified at least ten (10) business days in advance of any release time. Shop Stewards must get prior approval, which shall not be unreasonably withheld.

Section 3. New Hire Orientation

Shop Stewards shall receive timely notice of and shall be permitted to make appearances at New Employee Orientation sessions in order to distribute Union materials, and to make presentation about the Union, and to discuss Employee rights and obligations under the CBA. The Employer shall allow the Union Shop Steward at least 20 minutes to do the presentation. During such time, Employer personnel

present and other non-represented Employee/s shall leave the orientation room. The THC Chapter or Local 1021 Union Field Representative shall provide the Employer a list of authorized Union representatives who will be conducting Union orientation. The Union shall notify the Human Resources at least ten (10) business days in advance as to which Union representative will be conducting the Union orientation at a particular new hire orientation. The Union representative shall conduct the orientation professionally.

Section 4. Use of Employer's Facilities

If space is available and use shall not disrupt Employer operations, then the Employer shall reasonably make available to the Union, without charge, conference rooms and other meeting areas, for the purposes of holding meetings to conduct Union business within its scope of its representation of the unit during off-duty periods. The Union shall provide timely advanced notice of such proposed meetings. The Union will leave conference and other meeting areas in the same condition it was found in.

Section 5. Right to Representation

Should the Employer wish to meet a bargaining unit Employee for the purpose of conducting an investigation that might lead to the discipline of that Employee, the Employer must first inform such Employee three (3) business days in advance and will honor their right to have a Union Shop Steward or Union representative at the meeting. Both the Employee and Shop Steward shall be given the time off with pay to attend meetings with the Employer to take part in an investigatory meeting. An Employee may elect, in writing, to waive the three (3) business day waiting period and attend the investigatory meeting any time after receiving notification as stated above.

ARTICLE 5. DISCIPLINE AND DISCHARGE

Progressive Discipline

The Employer will use a system of progressive discipline using the steps outlined below. If an offense is egregious, specifically including but not limited to violence, threats of violence towards anyone on or near any THC premises, or theft, the Employer may skip certain steps of progressive discipline up to and including termination.

Every disciplinary step shall be conducted with the aim of resolving the problem, not of continuing on to the next step. The following goals shall be incorporated at every disciplinary step; written notices shall be detailed, information included shall be relevant and include ways to measure progress/completion. The corrective plan of actions shall be attainable and realistic in the setting.

Progressive steps are:

Verbal Counseling

Written Warning

Suspension of Employment (without pay)

Termination of Employment (Subject to the Special Grievance process in Section 6 below.)

The Employer may repeat the Written Warning Step up to one time for violations of the same infraction in this system.

In addition, the following may take place during an investigation:

Placing an Employee on Paid Administrative Leave (to protect the clients and/or volunteers, the Employee and the Employer when serious allegations are made). Paid Administrative Leave is not a punitive step.

Section 1. Notification

- I. Employees shall receive notice of a disciplinary action or pending investigation within ten (10) business days of Employer learning of a violation. Unless the violation is egregious the right to discipline shall be lost.
- II. Employees shall be notified three (3) business days prior to any disciplinary action against them. An Employee shall receive a written notice from their immediate supervisor outlining the reason for the disciplinary action, *and* its possible outcome(s). An Employee may elect in writing to waive the three (3) business day waiting period and attend the discipline meeting any time after receiving written notification stated above.
- III. Once a written notice is received, it is the Employee's responsibility to seek Union representation. If an Employee elects, they may represent themselves by completing the Decline Shop Steward Form.
- IV. If the Shop Steward, Union Field Representative, if applicable, or Management is not available during this period, the timeline may be reasonably extended, if agreed by mutual agreement.

Section 2. Right to attach Rebuttal

Employees have the right to attach a rebuttal within ten (10) business days to any disciplinary notice introduced into their personnel file. If an Employee does not attach a rebuttal it should not be considered agreement with the content of the disciplinary notice.

Section 3. Special Grievance Procedure For Terminations

- A. An Employee subject to termination shall be entitled to a hearing if requested and the following:
 - I. A notice of the action
 - II. The reasons for the action
 - III. A copy of the charges and the materials upon which the action is based; and
 - IV. The right to respond, either orally or in writing, to the authority imposing the discipline

If the Employee requests, a Shop Steward, other Union officer, or the Union Field Representative can be present at any and all meetings between the Employee and the Employer.
- B. Upon the request of the Union or the Employee, within seven (7) business days after the notice of termination, a meeting will be held between representatives of the Employer, the Employee, and their representatives to discuss the termination including, but not limited to, the allegations(s), if the allegation(s) constitute just cause for the termination, and alternatives to termination.
- C. If, following the meeting in subparagraph 2, the Employer still intends to terminate, such notice will be presented to the Employee and the Union within seven (7) business days unless there is mutual agreement to extend.
- D. If, following the notice in subparagraph 3, the Union elects, the Union has seven (7) business days to request mediation through the Federal Mediation and Conciliation Service. This meeting will be held at the earliest possible opportunity.
- E. If, following mediation, the Employer still intends to terminate, the Union may request arbitration under the grievance section of this CBA. In selecting an arbitrator, the parties agree that if the first selection is unavailable for a lengthy period then the last struck arbitrator shall be consulted for availability. The parties agree that haste in reaching resolution is valuable to all.

ARTICLE 6. GRIEVANCE PROCEDURE

Section 1. Discipline And Contract Interpretation

In the event a dispute arises with reference to the interpretation or enforcement of this CBA, the following procedure shall be followed, provided that the matter be presented to grievance within five (5) business days for discipline and ten (10) business days for issues involving interpretation or application of this CBA, otherwise the right of grievance is lost. The purpose of the procedure set forth below is to provide the Employer, the Employees, and the Union an orderly means of resolving disputes, which may arise between them. NOTE: Special Expedited Procedure Applies to Terminations.

Section 2. Grievance Defined

A grievance is a claim by an Employee or the Union concerning the interpretation or application of this CBA. The written, formal grievance shall contain a clear, brief statement of the issue, the date of the violation, the section(s) of the CBA allegedly violated, the proposed remedy, and shall be signed by the aggrieved party. The aggrieved party shall have the right to representation by a Shop Steward and/or Union Field Representative at each step of the grievance procedure.

Examples of Grievable and Non-Grievable Issues:

Grievable:

- Terminations after 90 day probationary period
- Demotions or salary reductions
- Suspensions without pay
- Violations of state, federal or local law, including violations of health and safety codes
- Breach of terms of the contract

Non-grievable

- Terminations during 90 day probationary period
- Disciplinary actions other than those cited above (e.g. written or verbal warnings not resulting in a consequence).
 - If, however, a written or verbal warning is subsequently introduced in a disciplinary action "with consequences" any and all written or verbal warnings in the personnel file shall be subject to the grievance procedure.
 - Written warnings must be completed on a form that permits the Employee to sign the document with the condition "I acknowledge receipt of this written warning but do not necessarily agree with the facts or the discipline."
 - Employees shall be given a copy of all disciplinary warnings
 - Employees may attach a rebuttal to any warning, which will be included in the personnel file. Failure to offer a rebuttal does not waive any legal rights.
- Voluntary resignations, including Employees who do not show up for work and do not follow the proper call in procedures for three consecutive days ("no call, no show")

Section 3. Procedure

When an Employee has a problem they inform their supervisor, with or without the assistance of a Shop Steward and/or Union Field Representative, and attempts to resolve the problem informally by discussing the issue.

Step 1. If there has been no informal resolution of the dispute by the Employee and the Employee's supervisor, the next step to address the grievance is for the Employee to submit a written statement of the grievance to the Human Resources Director. It is the Human Resources Director's responsibility to supply a copy of the grievance to the Department Director or Designee; to respond in writing within ten (10) business days after receipt to the Union and Employee who filed the grievance.

Step 2. If the grievance is not satisfactorily resolved or if no answer is given within the time specified in Step 1, the Union Shop Steward or the Employee who filed the grievance may contact the Deputy Director or their designee in writing to request a meeting to hear the grievance within five (5) business days after the start of the Step 2 process. The Deputy Director or their designee shall reply to the grievance within ten (10) business days following such meeting.

Step 3. If the grievance is not satisfactorily resolved in Step 2, or if no answer is given within the time specified in Step 2, the Union may, by written notice to the Executive Director within five (5) business days for discipline or discharge and in ten (10) business days for issues involving interpretation or application of the CBA after the Step 2 response, or on the last day which the answer was due if none was given, requests that the grievance be heard by the Executive Director or his/her designee within five (5) business days after receipt of the notice. The Employer shall reply to the grievance within ten (10) business days after the Step 3 grievance meeting.

Step 4. If, within ten (10) business days following the Step 3 grievance meeting the grievance is not satisfactorily resolved, or if no answer is given within the time specified, the Union may request for final and binding arbitration. The parties will attempt to agree upon an impartial arbitrator. In the event the parties are unable to agree upon an impartial arbitrator, then either party may request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS) within fifteen (15) business days of the notice requesting arbitration to select an arbitrator to hear and resolve the grievance. The parties shall flip a coin to determine which party will strike first name from the panel, and then shall proceed. The arbitrator selected shall hear the grievance as soon as possible.

The Parties may agree to utilize FMCS for mediation prior to, or as an alternative to, arbitration.

The expenses of the arbitration shall be shared by the parties. Each party shall bear the cost of its own representatives and witnesses. The arbitrator selected shall not have the authority or jurisdiction to add to, subtract from, change, alter or modify any of the terms of this contract. The decision of the Arbitrator shall be final and binding upon the parties.

The time limits listed in the grievance procedure may be extended by mutual written agreement between the parties.

Section 4. Expedited Arbitration

By mutual agreement the Union and the Employer may agree to utilize the following expedited arbitration procedure. The arbitrator shall be selected in the regular manner or may be a mediator from the FMCS sitting as an arbitrator.

- 1) All efforts shall be made prior to the hearing to stipulate to the facts and the evidence to the record;
- 2) No attorneys shall be used. However the parties shall have the right to other representation;
- 3) There shall be no stenographic record of the proceedings;
- 4) Only oral closing arguments shall be used; no briefs will be permitted to be filed;
- 5) Only a bench decision shall be required. The arbitrator may write a one page decision if mutually requested by the parties.

ARTICLE 7. WORK SCHEDULE

Section 1. Workweek

The workweek is from 12:01 AM Sunday to 12:00 AM Midnight Saturday

Section 2. Workday

The universal workday is a 24-hour period beginning at 12:01 AM and ending at 12:00 AM midnight each calendar day. The normal workday shift is a seven and a half (7.5) hour period with a forty (40) minute meal break.

Section 3. Housing Services Department – Rental Accounts Staff

One day a month, herein referred to as "Check Day", the Rental Accounts Staff of the Housing Services Department work and are paid 8 hours rather than the normal 7.5 hours. Rental Accounts Staff working and getting paid 8 hours on Check Day will not receive overtime pay, but will instead work and get paid for a 7-hour day on the Friday of the following week.

In the event the Rental Accounts Staff is no longer required to work 8 hours on Check Day due to adjusted business practices, this section shall be null and void.

Section 4 Last Minute Call

In the event an Employee is required, due to staffing needs, to work at a facility other than their designated facility, they shall be given not less than one and one-half (1 1/2) hours notification. In the event notification is less than one and one-half (1 1/2) hours, THC shall reimburse any additional cost the Employee incurs in traveling between their designated facility and the facility they are assigned to cover. The reimbursement costs must be outside of the Employees' normal travel and the Employee is responsible for following THC's reimbursement policy to request reimbursement.

Section 5. Breaks

Employees are permitted two (2) ten (10) minute paid rest breaks on each shift. Rest breaks will be taken as nearly as possible after two (2) hours of work and after six (6) hours of work. Meal breaks are forty (40) minutes. Thirty (30) minutes is unpaid and ten (10) minutes is paid of the forty (40) minute meal break.

Coverage:

- i. For Employees who work in a "public customer service position" (i.e. Desk Clerks and Administrative Staff) and cannot abandon their post, if two (2) Employees are scheduled to work a shift, one covers the desk while the other takes their meal and rest periods. If only one (1) person is scheduled for the front desk, but a peer staff (janitor, maintenance, associate) is on duty, the peer staff is responsible for covering the front desk while the Employee is on their meal break or rest period.
- ii. If only one (1) person is scheduled for the "public customer service position" and no peer staff is on duty, but a manager is, the manager is responsible for identifying the person to cover the desk while the Employee is on their meal break or rest period.

Section 6. Payday

All Employees will be paid bi-weekly (every other Friday). If the payday falls on an observed Holiday, paychecks will be issued on the previous business day. The Employer will make every effort to issue all checks no later than 12:00pm. If payment is delayed past 12:00pm members will be allowed a thirty (30) minute paid release time to go to their bank. All check stubs will exhibit up to date accrued vacation and sick hours.

Section 7. Alternative Work Schedules

The parties agree, subject to California State Law, to consider alternative work schedules that improve effectiveness of the workforce and the delivery of service.

ARTICLE 8. SELECTION AND HIRINGSection 1. Job Posting

- A. Postings will include title, salary, and location of position. Complete job descriptions will be made available at each Employer site. Jobs will be posted internally and externally simultaneously, and will be posted at 126 Hyde Street and at all other Employer sites.
- B. Job announcements for vacant bargaining unit positions to be filled will be posted in house within five (5) business days after the position is vacated or the Employee submits a letter of resignation to the Supervisor and the Director of Human Resources. If a position is being held for some period before posting, an internal notice will be posted to that effect giving the probable date for posting.

Section 2. Selection and Hiring Criteria

- A. Former Employees who have been laid off or Employees who have had their hours reduced will first be notified, following internal postings, and offered reinstatement to the position with the program from which such layoff or reduction occurred.
- B. The most senior qualified internal applicant shall have priority for the position before any outside applicant is considered.
- C. Current Employees hired into vacant positions will be placed in the position without a break in THC seniority relative to benefits, and shall start to accrue seniority for layoff and recall purposes in the new classification at the program. The transferred or promoted Employee enters new probationary period. If the Employee does not pass the probation, they retain seniority to the old position. If the Employee passes the probation period, the Employee loses bumping rights to the old position. In the latter example, if there is a vacancy in the Employee's previous job classification, the Employee shall retain seniority rights when applying for the vacant position.
- D. If former Employees who were laid off refuse an offered position at their previous Full-Time-Equivalency (F.T.E.) and salary, they shall have exhausted their recall rights and their seniority shall be broken.
- E. Employees who have had their hours reduced and subsequently refuse a restoration to their same F.T.E. when offered must follow the normal process of applying for vacant positions as they become available.
- F. Case Managers, Housing Counselors, and Tenant Organizers shall have input in all initial interviews with candidates for Case Manager, Housing Counselor and Tenant Organizer positions.

Employees involved in the hiring process must undergo training by the Employer's Human Resource Department to ensure compliance with confidentiality and other laws governing interviews.

- G. Preference in hiring may be given to the most senior qualified applicant who can enhance the gender and racial diversity of the particular unit, department or location.

Section 3: Transfer Policy**A. Voluntary Transfers**

After an Employee has been on the job nine (9) months, he or she can submit their name and requested shift(s) and locations to a Transfer Request List (TRL). Only Employees who have had no written discipline notices during the preceding six (6) months are eligible to transfer. All Employees on the TRL will be given preference for the open positions listed on the weekly Open Position Report.

I. A minimum of ten (10) openings will be filled from the TRL each year, unless there are fewer than ten (10) available. When a position becomes available, the Human Resources Department will review the TRL and ask each person who requested that shift or location if they are interested in the open position.

II. The Human Resources Department will contact the supervisor of the open position and inform them that a qualified internal candidate has requested transfer and schedule a time for the supervisor to review the Employee's file. The Supervisor will meet with the internal applicant and coordinate the transfer into the new role.

III. If there is more than one qualified internal applicant, the decision shall be based on seniority. Transfers of qualified staff may be delayed until the hiring of a replacement occurs, or for good cause as agreed upon by the Labor-Management Committee. An Employee who obtains a voluntary transfer cannot rejoin the TRL until they have worked in the current position for at least one year.

B. Transfer Request List (TRL)

An Employee can request their status and current position on the TRL by scheduling an appointment with the Human Resource Department to do so. An appointment will be setup within two (2) business days after the request. Once a month at the end of the month, the Human Resources Department will send the Union Field Representative the current TRL with the requesting Employee's name, position (on TRL), date of request, seniority date, shift requested, location requested and position requested.

C. Hostile Work Environment Transfer

A transfer that is requested by an Employee due to a hostile work environment created by a tenant, co-worker or supervisor will be acted upon within two (2) business days. The Employer will inform the Shop Steward if the claim of a hostile work environment is under internal investigation and is therefore delaying the requested transfer. The Employer reserves the option to return the worker to the original worksite if/when the work environment issues are rectified. Transfer due to a hostile work environment shall be reviewed after no longer than two months. The status of this kind of transfer may be changed to permanent placement at any time.

D. Procedure for Involuntary Transfers

Involuntary transfers may occur to accommodate a business need. Involuntary transfers shall be limited to two (2) months unless an extension is granted by the Labor-Management Committee. The process for selecting Employees for involuntary transfer is as follows:

- I. Supervisor seeks Employee from a worksite that they supervise whose shift most closely approximates that of Employee needing to transfer.
- II. If more than one Employee fits this description, supervisor will ask for volunteers. If nobody volunteers, transfer decision will be based on seniority.

Employer reserves the right to deny a transfer to/from a particular worksite if a conflict of interest exists (e.g. a family member or significant other lives or works at the building the Employee is applying to).

E. Request for Promotion

Employees are eligible to apply for promotions after six (6) months of employment with the Employer. Only Employees who have no active discipline notices in their personnel file are eligible to apply for promotions. The Employer reserves the right to waive this requirement upon the recommendation of the supervisor.

F. On Call Program

THC maintains an On-Call Program for Desk clerks, Janitors and Maintenance Workers. Employees should refer to THC's On-Call/Per Diem Staff agreement and THC's On-Call/Per Diem Staffing Policy and Procedures for an outline of the On-Call Program.

Any On-Call/Per Diem who works twenty two and one-half (22.5) hours or more, per week, for six (6) months, shall be offered the option to assume a regular full-time position, of the same job classification, from THC's Open Position (OP) Report, granted there is one available. Employees must be eligible to transfer per THC's transfer policy.

ARTICLE 9. SENIORITY AND LAY-OFF

Section 1. Seniority

- A. Seniority for regular full-time and regular part-time Employees is defined as the length of continuous employment based on the original date of hire with the Tenderloin Housing Clinic and City Housing, Inc., the wholly owned subsidiary that merged with the Employer in 2004.
- B. The parties agree to abide by the principle of classification and seniority for purposes of layoffs and recall.
- C. Employees' seniority rights shall be discontinued for any of the following reasons: Resignation, discharge for just cause, termination during the probationary period, layoff in excess of one (1) year without recall or failure to return to work within three (3) business days of receipt of a proper notice from the Employer by certified mail. This three (3) business day requirement can be extended by mutual agreement between the Employee and the Employer.
- D. Employees who resign their position in good standing and return to work for the Employer after less than one calendar year shall retain their seniority date adjusted for the period of resignation.

Section 2. Layoff and Recall

- A. A layoff shall be defined as a non-disciplinary separation of an Employee based upon legitimate business needs as determined by the Employer. In reviewing the necessity for layoffs, the Employer agrees to make the determination based upon financial necessity. The Employer recognizes its obligation to bargain with the Union over the effects of any layoff of bargaining unit Employees and in that regard it agrees to review its determination by the contract and/or funding source financially reduced, or eliminated, thereby causing the necessity for layoffs.
- B. The Employer shall give Employees thirty (30) calendar days notice (unless the Employer is given less notice during funding negotiations or in the event of an unforeseen emergency or catastrophe), prior to the effective day of layoff. Except in the case of emergency, there shall be at least thirty (30) calendar days notice given to the Union prior to the layoff of any bargaining unit Employees.

- C. Employees shall not accrue seniority while on layoff, but shall not forfeit previously accrued seniority and benefits as defined in the terms of this CBA. In the event of recall within one (1) year of layoff, or rehire, an Employee's years of service shall continue from the date of return to service or rehire.
- D. Employees on layoff shall be responsible for informing the Employer of their current address and telephone number while on layoff.

ARTICLE 10. PERSONNEL POLICIES

The Employer agrees to notify the Union in writing at least fifteen (15) business days prior to the effective date of any changes in the personnel policies. If requested, the Employer agrees to engage in impact bargaining with respect to significant or relevant changes to personnel policies. This is defined as changes that will have an adverse economic and/or job responsibility impact. The exception to this rule regarding a significant or relevant change would be required changes to be compliant with state or federal law.

ARTICLE 11. PERSONNEL RECORDS

Section 1. Contents

The information in an Employee's personnel file is permanent and confidential, and must be kept up to date. The Employee should inform the Human Resources Director immediately whenever there are changes in personal data such as address, telephone number, marital status, number of dependents, and person(s) to notify in case of an emergency.

Section 2. Right to Inspect

An Employee has the right to inspect their personnel file at reasonable times, at a reasonable place, and on reasonable notice. An Employee has ten (10) business days to respond to documents in their file after reviewing the file. This response will be attached to the file copy and will remain in the file. No anonymous material shall be placed into the file of any Employee. In addition, Employees have the right to request copies of all employment-related documents. An Employee may inspect only his or her own personnel file and only in the presence of the Human Resources Director or their designee. With the written permission of the Employee, a Shop Steward or Union Field Representative may review the Employee's personnel file when in the presence of a departmental representative and obtain copies of the contents upon request.

Section 3. Removal of File

Personnel files are the property of the Employer and may not be removed from the Employer's premises without written authorization from the Human Resources Director. Before a personnel file is removed from the Employer's premises, a copy of the entire file shall be created and presented to the Employee with a written explanation of why the file is being removed from the premises and to whom the file is being presented.

Section 4. Subject to Review

Disciplinary actions that occurred before the signing of this CBA that are used in a subsequent grievance process shall themselves be subject to review. That is, past write-ups being introduced in a subsequent disciplinary hearing, will themselves become subject to the grievance procedure.

Section 5. Period of Relevance

Materials relating to disciplinary actions in the Employee's personnel file, which have been in the file one (1) year shall not be used in a subsequent disciplinary process provided there has been no re-occurrence of the conduct on which the discipline was based. Reference to disciplinary actions, which were based on vi

olations of law, such as for sexual harassment, are exempt from this provision.

ARTICLE 12. WAGES/SALARIES**Section 1. Rate of Pay**

The rate of pay for each covered classification shall be found in Appendix A - the THC Bargaining Unit Classification and Rate of Pay Sheet. Changes to the data in the THC Bargaining Unit Classification and Rate of Pay Sheet during the life of the CBA will be maintained by Employer's Human Resources Department. The Union will be notified of any changes.

Section 2. Pay Raises Cost of Doing Business (CODB) General Fund

If the City and County of San Francisco allocates a CODB percentage increase to the existing General Fund contracts and/or grants of the Employer, that percentage shall be applied to the rate of pay of each bargaining unit employee on his/her anniversary date of hire.

Section 3 Bilingual Pay

Staff members in the following classifications:

Case Managers, Housing Planning Specialists, Housing Counselors, Representative Payees and Community Organizers who possess fluency in a second language (including American Sign Language) that are required to utilize their language skill in the delivery of services to clients/volunteers and agree to utilize their bilingual fluency to translate as needed within THC will earn an additional \$0.50 per hour shift differential. Staff who may be eligible will be required to pass a language proficiency test.

Section 4 Cell Phone Use

Some Tenderloin Housing Clinic (THC) employees may be required to use cellular phones based on the needs and requirements of their position.

Any employee required to have and use their personal cellular phone will be reimbursed at a standard rate. For positions that require the use of a personal cellular phone for phone calls, texts, and emails on a smart phone device, the employee shall receive up to a sixty nine dollar (\$69.00) reimbursement per month. For positions that require the use of personal cellular phone for calls and texts only, the employee will receive up to a thirty six dollar (\$36.00) reimbursement per month. The reimbursement will be included on the employee's first paycheck of the following month.

ARTICLE 13. OVERTIME/COMPENSATORY TIME

Each position with THC will be classified as non-exempt or exempt and this designation will be made clear to Employees at the time of hiring.

Section 1. Non-Exempt Employees

All Employees covered by this CBA who are employed in a non-exempt capacity (as defined in the requirements of the Federal Fair Labor Standards Act and the California Labor Code) will be paid overtime at the rate of one and one-half (1-1/2) times the Employee's regular rate of pay for all hours worked in excess of thirty seven and a half (37.5) hours in one week (workweek is defined as Sunday

through Saturday) and for the first four and a half hours (4.5) in excess of seven and a half (7.5) in a single work day. Any hours in excess of the times indicated, will be paid in accordance with California's Overtime Law (FLSA).

Employees must receive advanced approval from their direct supervisor or the department director prior to any overtime. See Article 5, Section 1 and 2 of the CBA for definition of workweek and workday.

- A. Overtime at two (2) times the regular wage is paid for all hours worked in excess of twelve (12) in one workday.
- B. Part-time Employees shall not be required to work beyond their normal weekly schedule and there shall be no threat of negative consequences from their supervisor for not accepting additional hours.
- C. Employees must have prior approval from their immediate supervisor before working any overtime.

ARTICLE 14. BENEFITS

Section 1. Group Health Insurance

Health and dental benefits enrollment begins on the first of the month after 30-days from the employment qualifying date. Spouses, registered domestic partners and dependent children are eligible to participate in an Employee's health benefits package. An Employee may receive the cash equivalent of the Employer's cost of health coverage for the Employee's individual coverage if he/she provides verification that he/she has used the funds to acquire health benefits through a health carrier not supplied by the Employer.

If the increase to health care premiums for the Chinese Community Health Plan and Kaiser + Fidelity medical plans are 5% or below, the following table will determine the Employer's contribution:

	Base Plan (CCHP)	Buy-Up Plan (Kaiser + Fidelity)
EE Only	100%	100%
EE + Spouse	EE Only Rate for Base Plan	EE Only Rate for Buy Up Plan
EE + Child(ren)	95%	81%
EE + Family	EE + Child(ren) Rate for Base Plan	EE + Child(ren) Rate for Buy Up Plan

If the increase to health care premiums for either the Chinese Community Health Plan or Kaiser + Fidelity medical plans is above 5%, both parties agree to re-open the CBA to negotiate Article II. Benefits, Section 1. Group Health Insurance.

Section 2. 403B Plan

Employees are eligible to enroll in an individual Tax-Sheltered Annuities plan (TSAs). An Employee of a non-profit organization can elect to defer a portion of their salary for retirement in what is called a 403(b) plan. A 403(b) plan is similar to the 401(k) plan that is offered to Employees of for-profit companies. Employer does not and is not responsible in advising appropriateness of or tax consequences related to participation. Employer holds no liability whatsoever for any and all losses suffered by an Employee with regard to his/her selection of the investments(s); the selection of the regulated investment company; or the solvency of, operation of, or benefits provided by designated regulated investment company. All changes and/or cancellation to deductions shall be made in writing to the designated investment company and by the Employer.

The Employer agrees to make the creation of an Employer match program for Employees enrolled in the 403(b) plan a top priority in every future contract year until funding for the program is achieved. The Union shall have right to negotiate for such a plan until it is in place.

The Employer will contact the Union, schedule a meeting, and provide information of the findings for potential Employer contributions for those Employees who contribute to the 403(b) plan no later than January 31, 2018.

Section 3. Workers Compensation

When an Employee has suffered a work-related injury, the difference between workers' compensation benefits and the Employee's gross salary will, at the discretion of the Employer, be made up by utilizing unused accrued sick and/or vacation leave. The Payroll Unit of the Employer shall compute the number of hours needed and will make the necessary adjustments. Employees shall be required to provide to the Payroll Unit biweekly verification of workers' compensation payments received. Failure to provide such verification will result in the discontinuance of integration of sick and/or vacation leave with workers' compensation benefits.

Section 4. COBRA Benefits

Any Employee, upon separation of service from the Employer, shall be given the option of continuing their medical and dental benefits, according to COBRA guidelines

Section 5. Education and Wellbeing Fund

Employees are always encouraged to engage in educational activities that foster Professional Development and Personal Wellbeing.

- A. Professional Development
Employees can engage in Professional Development educational activities by furthering their education levels, participating in work-related conferences and attending training events.
- B. Personal Wellbeing
Employees can engage in Personal Wellbeing educational activities by participating in organized classes, trainings, and activities provided by reputable academic, medical, professional and civic organizations that address physical and mental health wellbeing. Approved activities include, but are not limited to, stress management workshops and smoking cessation workshops. Activities not approved by this fund include, but are not limited to, services such as gym memberships, social clubs, massages, therapy and acupuncture.

Based on this, the Employer agrees to annually allocate the amount of five thousand dollars (\$5,000) for tuition, fees and supplies for Professional Development and Personal Wellbeing educational activities, as well as payment of certain licensing fees for full- and part-time Employees.

This fund is available on a first come, first serve basis until the \$5,000 is exhausted in a fiscal year.

It is mutually agreed between the Employer and the Union that Employees should enroll in free or low cost programs when possible rather than higher cost but substantially similar programs. The parties agree that the Employer has the right to deny a request for reimbursement in all such situations. The Union or the Employee may question the denial but cannot grieve.

The maximum allocation per Employee will be \$200 for the period of July 1st through December 31st and \$200 for the period of January 1st through June 30th of each year.

Members are required to apply to the Human Resources Director for approval of funds. Employer retains the discretion to determine which activities are appropriate for this fund. The following steps outline this process:

1. Employee must submit a Request for Reimbursement form to their Supervisor stating the need for the reimbursement along with supporting documentation.
2. The Human Resources Director, in coordination with the Employee's Supervisor and Director of Finance, will approve/disapprove the request for reimbursement.
3. After completion of the approved educational activity the Employee is required to provide proof of attendance and documentation of successful completion (passing grade required for coursework), at which time reimbursement will be made.
4. When requested, in some select circumstances, the Employer may elect to advance the cost of the program up to the maximum allowable allotment.

Section 6. Employer Initiated External Training

- A. The Employer may allow Employees to attend, during normal working hours, approved workshops, seminars, conferences and training sessions, which are work-related. The following shall be paid by the Employer: fees for workshops, seminars, conferences, and training sessions, public transportation costs and/or mileage at the current IRS rate, parking costs and toll charges.
- B. In accordance with the current practice, any Employee who is approved for Employer initiated external training will continue to receive their regular wages for the time spent in the training.

Section 7. In Service Training

The Employer may provide in-service training for Employees that is relevant to program needs. Required attendance at an in-service training should be considered a duty assignment for the purposes of payment of wages. When attendance is required at a program during non-work hours, or not contiguous to normal work hours, Employees shall be paid a minimum of four hours.

Section 8. Flexible Benefits Plan - Section 125

Employees are eligible to enroll in one or both of the following Flexible Spending Accounts (FSA): a Dependent Care Reimbursement FSA and a Health Care Reimbursement FSA.

The FSA allows the Employee to set aside a set amount of money from their salary on a pre-tax basis each year in order to pay for approved health care expenses and/or approved dependent care expenses. The amount an Employee chooses to deduct from their paycheck is placed in a special account that allows the Employee to pay for those approved expenses throughout the year. FSAs may be used to pay for a wide range of non-insurance covered services and out-of-pocket expenses, such as qualified daycare and elder care expenses, prescription eyewear, deductibles and co-payments.

All Employees are eligible on the date of hire to establish a Dependent Care Reimbursement FSA. All full-time Employees who have completed six months of employment are eligible to establish a Health Care Reimbursement FSA.

Section 9. Commuter Benefits

Employees are eligible to enroll in the employers Commuter Benefit program. The Commuter Benefit Program allows employees to pay for commuter benefits for transit, van pool, and or parking with pre-tax money from their salary. After an employee enrolls in the Commuter Benefit Program they will receive a commuter card within 2-3 weeks with their selected dollar amount loaded to the card. Each month the commuter card will reload the selected dollar amount on the first day of every month. The commuter card

can be used to pay for transportation in any Bay Area transit system, including the Clipper Transit Card, MUNI and BART and/or parking. Employees may enroll, re-enroll, change the terms of enrollment or withdraw on a monthly basis.

Employees may enroll in the Bike Commuter Benefit Program when using a bicycle for their commute. When an employee enrolls in the Bike Commuter Program the employer will contribute \$20.00 per month for each enrolled employee. The employer's payment is sent directly to the Bike Commuter Program carrier. The Bike Commuter benefit program works as a reimbursements benefit, employees will need to pay for the needed repairs and submit receipts to the Bike Commuter Benefit Program carrier for reimbursement.

Section 10. Life Insurance and Long Term Disability

After six months of employment with Employer, Employees will be automatically enrolled in a life insurance program and a long-term disability insurance program. All Employees who work a minimum of 30 hours per week will be eligible for these benefits. The Long Term Disability insurance pays 60% of monthly earnings after 180 consecutive days of disability. Life insurance coverage is in the amount of \$30,000.

ARTICLE 15. HOLIDAYS, VACATONS, SICK LEAVE

Section 1. Holidays

A. THC follows the Holiday Schedule below:

New Year's Day
 Martin Luther King Day
 President's Day
 Memorial Day
 Independence Day
 Labor Day
 Indigenous Peoples Day
 Veteran's Day
 Thanksgiving Day
 Friday after Thanksgiving
 Christmas Day
 Employee's Birthday
 (Must be taken in the calendar month of the employee's birth date on file. Employee must follow Employer's Vacation Leave policy when requesting the Birthday Holiday.)

All regular full time Employees are paid for the above holidays. Employees regularly scheduled to work on a holiday will be paid for the holiday, plus any hours worked that day (double time).

When an Employee who does not work on the day of the holiday calls in sick on the day prior to or following the holiday on more than one occasion in a calendar year; a note from a medical provider will be required to excuse the Employee's absence. If proper documentation is not submitted the Employee will not receive pay for the holiday.

Also, hotels must operate 24 hours a day and staffing is critical to the operation of hotels. Therefore, holiday pay will not be awarded to an Employee who has an unexcused absence for the holiday shift they were scheduled for.

When the Employer determines it is not possible to release all Employees who request the holiday off, the right to take the holiday off shall be granted in order of seniority within each location or department. Likewise if more Employees want to work a holiday than are scheduled the decision shall be made in order of seniority.

CBA 7.1.17 – 6.30.20

THC & SEIU Local 1021

B. Holidays for Part-time Employees

Part-time Employees receive holiday pay pro-rated based on their standard weekly hours worked.

C. Holidays During Vacation

If a holiday falls within an Employee's vacation, the day will not be counted as a vacation day.

D. Holidays on Regular Day Off

If a THC observed holiday falls on a regular day off, the Employee shall be paid for the holiday at the straight time rate.

E. Saturday or Sunday Holidays

When a holiday falls on a Saturday or Sunday, respectively, the preceding Friday or the following Monday shall be observed consistent with the day of celebration determined by the City and County of San Francisco.

F. Working on a Holiday

Employees regularly scheduled to work on a holiday will receive one day's regular wage in addition to pay for all hours worked on the holiday.

G. Floating Holiday

All full-time regular Employees receive three floating holidays per year in addition to vacation and sick leave and the Employer's regular holidays. These three floating holidays allow Employees to have additional paid leave for personal reasons such as religious observances, significant personal events, etc. Employees qualify for floating holidays after they have passed the 90-day orientation period. Two floating holidays will be granted to the employee's floating holiday balance on January 1 and one will be granted to the employee's floating holiday balance on July 1.

Floating holidays may be used to cover full day absences only. Each employee's floating holiday balance may not exceed fifteen (15) hours at any time. Once the floating holiday balance cap is reached, no further floating holiday grants will be awarded until the employee's floating holiday balance is less than the cap. Upon termination of employment, any unused floating holiday balance will be paid to the employee along with any other wages owed.

Requests must be submitted a minimum of one day prior to the requested day off and must be approved by the supervisor, through the time keeping system.

H. Battery Pay

Employees will receive regular pay for absences from work to attend Worker's Compensation approved medical appointments to treat physical injuries sustained by battery while on duty, and not covered by Worker's Compensation.

Additionally, employees will receive regular pay for absences not covered by Worker's Compensation due to the three (3) day Worker's Compensation waiting period for physical injuries sustained by battery while on duty.

Employees must provide Human Resources with a doctor's note for each approved medical appointment within two (2) business days of the visit.

Section 2. Vacation**A. Vacation Accrual**

Regular full-time and part-time Employees are entitled to paid vacation. Regular full-time Employees accrue vacation as described below. Part-time Employees accrue vacation on a pro-rata basis. Employees accrue vacation on a monthly basis and amounts are stated on the pay stubs.

Vacation time for full-time Employees accrues as follows:

During 1st year:	7.5 hours per month
During 2nd year:	8 hours per month
During 3 rd year:	8.66 hours per month
During 4 th + 5 th years:	10 hours per month
During 6 th - 9 th years:	13.34 hours per month
During 10th year +:	16.66 hours per month

Part-time Employees accrue vacation on a prorated basis. Vacation time for part-time Employees Accrues follows:

1-10 hours per week	25% of full-time accrual rate
11-20 hours per week	50% of full-time accrual rate
21-31 hours per week	72% of full-time accrual rate

B. Maximum Accrual

Vacation time can accrue up to a maximum of one hundred and sixty (160) hours for employees who have worked from date of hire through year nine (9). Vacation time can accrue up to a maximum of two hundred (200) hours for employees beginning in their tenth (10) year of employment. Once this cap is reached, no further vacation will accrue until some vacation time is used. There is no retroactive grant of vacation compensation for the period of time the accrued vacation compensation was at the cap.

Employees who have been employed for one (1) year shall be eligible to cash out up to half of their vacation accrual two (2) times per calendar year.

C. Scheduling Vacation

When requesting vacation time off, an Employee submits a request for time off to their immediate supervisor through the time keeping system at least two (2) weeks in advance. If approved, the requested time off will automatically be recorded on the Employee's timecard in the time keeping system. If the supervisor determines that the request cannot be accommodated, they will reject the request in the time keeping system and discuss it with the staff person to select a time that can be accommodated.

Vacation time can generally be used after two (2) months of employment when work schedules permit. Vacation time can only be used once it has been accrued. Requests to use vacation time that has not yet been accrued must be made in writing to the Human Resources Director or designee.

Employees may utilize one vacation day with one day's notice to their supervisor with supervisor's approval through time keeping system procedure.

Section 3. Sick Leave

A. Eligibility

Regular full-time Employees accrue sick time at 7.5 hours per month for a total of 12 days a year.

B. Maximum Accrual

Regular part-time Employees accrue sick time on a pro-rata basis. Sick time can accrue up to a maximum of 16 days (120 hours). Once this cap is reached, no further sick time will accrue until some sick time is used. There is no retroactive grant of sick compensation for the period of time the accrued sick compensation was at the cap.

C. Utilization

Sick leave pay is available only if the Employee or a member of the Employee's immediate family (parents, children, and/or spouse, and/or domestic partner) are in fact ill, disabled, or injured. The Employer may request as proof of illness a note from a health care provider, before paying sick leave if there has, within the previous twelve (12) month period, been a documented pattern of sick leave use or the use of an excessive number of sick leave days. The Employer must previously have informed the Employee if a note shall be required for a future illness.

When calling in sick, an Employee should contact their immediate supervisor two (2) hours prior to the start of the shift for the day they are calling in sick. If the Employee is unable to speak directly to the immediate supervisor, they must leave a message on the supervisor's voicemail to ensure the supervisor is aware of the absence. If the Employee is unable to speak directly to the supervisor, in addition to leaving a voicemail, they must contact Human Resources. If the Employee has not called in by the start of their shift, they will not be paid for the day unless a written statement from medical personnel is provided to explain why the Employee was unable to call earlier in the day. If an Employee is unable to work for four or more days they must bring a doctor's verification to Human Resources.

D. Medical, Dental, Eye Care Appointments

When an Employee needs to take sick time off for a medical appointment, the Employee should notify their direct supervisor one-week prior to the appointment if possible. The supervisor will then pass the information on to Human Resources to be recorded.

Sick time may be used when an Employee is sick, for medical and dental appointments, or for the illness or medical appointment of dependent children, parents, spouse or registered domestic partner.

E. Vacation and Sick Leave

If an Employee becomes ill during a vacation, and the illness prevents the Employee from taking a previously scheduled vacation, the Employee may opt to utilize sick leave in lieu of vacation leave. The Employee must provide adequate verification to the Employer of both the illness and the impact in order to qualify.

F. Reporting Requirements

If any Employee is out sick or hospitalized for seven calendar days or more due to illness that is not work related, they are encouraged to apply for State Disability Insurance (SDI) benefits. Human Resources will supply the necessary forms to apply for SDI, but it is each Employee's responsibility to complete the application.

G. Integration With State Disability Insurance

When an Employee is eligible to receive disability benefit payments, they may receive full disability benefit payments plus such portion of accrued sick leave pay as shall aggregate to an amount equal to, but not exceeding, the Employee's regular rate of pay. At the Employee's request, sick leave and/or vacation pay shall be integrated with disability benefits, State Disability Insurance (SDI), Workers' Compensation, or any other disability income an Employee may be eligible for, so that the sum shall not exceed one hundred (100) percent of the Employee's regular net pay. In cases of industrial injury where the Employee is entitled to Workers Compensation Insurance payments, the same method of integration of accrued sick leave shall apply.

H. Catastrophic Leave Policy

Employees, at their own election, may donate up to two of their accrued vacation days to a co-worker who has exhausted their own accrued sick leave. This election can only be exercised one time every six months and must be within the same budget unit.

ARTICLE 16. LEAVES OF ABSENCE**Section 1. Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA)**

The Employer agrees to comply with the Federal FMLA and the CFRA, both of which require the Employer to permit each eligible Employee to take up to twelve (12) work weeks of FMLA and/or CFRA leave in any twelve month period. To be eligible for FMLA and/or CFRA leave, the Employee must have been employed by the Employer for at least 12 months, must have worked at least 1250 hours during the 12-month period immediately preceding commencement of the leave, and must be employed at a worksite where the Employer has 50 or more Employees within 75 miles. Events which may entitle Employee to FMLA and/or CFRA leave are set forth in the Employer's Personnel Policies Manual. FMLA can be taken for contiguous days or weeks or intermittent leave down to one hour in length. Further extensions of time off may be approved at the discretion of the Human Resources Director with approval of the Deputy Director.

Section 2. Paid Family Leave (PFL)

For California Employees covered by State Disability Insurance and who have earned at least \$300 from which deductions were withheld, PFL insurance provides up to six weeks of benefits for individuals who must take time off to care for a seriously ill child, spouse, parent, or domestic partner, or to bond with a new minor child. Employees are not required to use their vacation time for this leave if they do not choose to. Employees, at their sole discretion, may elect to supplement their PFL with accrued sick leave or vacation time up to their normal earnings. When members are on PFL they shall also be considered to be on FMLA/CFRA if they qualify.

Section 3. Personal Leaves of Absence

A personal leave of absence without pay may be granted to a regular full-time Employee who has completed one (1) year of employment, upon written request at least one (1) month in advance (except in case of emergency), subject to the approval of the Department Director and Human Resources Director. Such leave may be granted up to ninety (90) calendar days.

Section 4. Bereavement Leave

Upon the Employee's request they shall be granted up to three (3) regularly scheduled working days per event with pay when absent because of the death of an immediate family member. Immediate family is defined as spouse, domestic partner, child, parent, sibling, grandchild or grandparent. Stepfamily relationships, guardianships and maternal or paternal aunts and uncles are not automatically considered

immediate family and details of the relationship may be requested. Members of the Employee's immediate household and others may be considered as immediate family if approved by the Employer.

When the death or service occurs outside the State of California the Employee may request, and shall be granted, up to three (3) additional regularly scheduled working days, which shall be without pay unless the Employee elects to utilize accrued vacation days. The employer may require verification upon the Employee's return to work.

Employees may request an unpaid leave of absence of up to ninety (90) days, per the terms of Article 13, Section 3 of the CBA when necessary to resolve legal and personal issues resulting from a death. This leave shall not be unreasonably denied.

Section 5. Jury Duty/Witness Leave

A leave will be granted to support an Employee in fulfilling their obligations as a citizen to serve as requested. An Employee called to jury duty must notify their supervisor immediately and produce a copy of the jury summons. An Employee will be paid the difference between their regular pay and jury pay up to ten working days, but only after submission of a jury summons and compensation receipts. The Deputy Director reserves the right to waive the ten working day restriction when necessary.

Section 6. Military Leave

The Employer will provide leave in accordance with all Federal laws relative to military leave of absence.

Section 7. Pregnancy Leave, Adoption, Foster Placement

Employees shall be entitled to a leave of up to four (4) months with no restriction based on length of employment in the case of the birth of a child. Other leaves shall be handled in accordance with the FMLA and/or CFRA where applicable.

In the case of Adoption or Foster Placement in the Employee's home, Employees shall be entitled to a leave of up to four (4) months. This provision shall apply to one foster placement per year

Section 8. Leaves and the Probationary Period

An Employee's probationary period will automatically be extended by the duration of any leave of absence.

ARTICLE 17. LABOR / MANAGEMENT COMMITTEE

The Employer and the Union agree that communication is beneficial to the collective bargaining relationship. To that end, a Labor-Management Committee shall be established and shall be composed of four (4) Management representatives of the Employer and four (4) Employee representatives of the Bargaining Unit - all Employees of the Employer. Upon the request of either party the Committee shall meet on paid time at a mutually agreed upon time and place to address topics of mutual interest and concern, including, but not limited to, health and safety, policies and procedures. The activities of the Committee are advisory and not subject to the CBA's grievance procedure. The parties shall submit agenda items at least one week before the scheduled meeting. If either party requests a meeting, the meeting will be scheduled within two weeks of the request unless both parties agree otherwise. Meetings will not be scheduled more often than monthly without the consent of both parties.

ARTICLE 18. COMPLETE CBA AND BENEFICIAL PRACTICES

This CBA contains all of the covenants, stipulations, and provisions agreed upon by the parties hereto, and no agents or representatives of either party have the authority to make, and none of the parties shall be bound by or liable for, statements, representations, promises, or agreements not set forth herein, unless agreed to, in writing, by the parties signatory to this CBA.

The Employer and the Union agree that any practice, policy or working condition in existence prior to the negotiation of this CBA, that is beneficial to Employees but not addressed in this CBA, shall continue in force; unless or until the parties mutually agree otherwise. No Employee shall suffer a loss in benefits as a result of the negotiation of this contract, except where the loss was negotiated.

This CBA supersedes any prior agreement, whether oral, written or implied, concerning wages, hours or working conditions of Employees covered by this CBA.

ARTICLE 19. MANAGEMENT RIGHTS

It is mutually agreed that it is the Employer's exclusive duty and right to manage the operations of the Employer and to direct the working forces. This right includes, but is not limited to, the right to determine the number and location of facilities, determine the size of the work force, set personnel policies, hire, transfer, promote, demote, schedule, determine job content, reclassify, lay off, discipline, or discharge Employees, subject to the conditions provided herein or mandatory subjects of bargaining.

ARTICLE 20. RIGHT TO PRIVACY IN THE WORKPLACE

Employees subject to this CBA shall have a reasonable expectation of privacy and to be secure from unreasonable searches and seizures on their person and their work area to the extent provided by law.

ARTICLE 21. NO STRIKE AND NO-LOCKOUT

The Employer and the Union agree that so long as this CBA is in effect, there shall be no lockout, strike, or work slowdown.

ARTICLE 22. HEALTH AND SAFETY

The Employer will make every reasonable provision for the health and safety of Employees. The Employer and the Union recognize the applicability of Federal and State laws surrounding the conditions of employment.

ARTICLE 23. AMERICANS WITH DISABILITIES ACT (ADA)

The Americans with Disabilities Act of 1990 (ADA), as subsequently amended, and the corresponding California Law prohibit discrimination against persons with disabilities. It is the policy of the Employer to comply with the provisions of these Acts when applicable.

ARTICLE 24. DIGNITY AND RESPECT

The Employer agrees that THC managers and supervisors should always treat their Employees with courtesy, dignity and respect. No Employee shall be disciplined or reprimanded in the presence of tenants and/or co-workers.

The Union and the Employer agree that courtesy in day-to-day communications between Employees and supervisors and managers of the Employer should always be present in the Labor-Management relationships.

ARTICLE 25. PROGRAM CHANGES

In the event of a cancellation of a contract, a relocation of a program, an addition of a new contract and/or program, and/or a decrease or increase in program funding that affects bargaining unit positions, the Union shall be given notice of such actions(s) in advance, which shall not be less than thirty (30) calendar days, unless the Employer is given less notice or in the event of an unforeseen emergency or catastrophe.

ARTICLE 26. SAVINGS CLAUSE

If any provision of the CBA or the application of such provision to any person or circumstances be ruled contrary to law by any federal or state court or duly authorized agency, the remainder shall not be affected.

ARTICLE 27. DURATION OF THE CBA

This contract shall be in effect from July 1, 2017 to and including June 30, 2020 and from year to year thereafter, unless at least sixty (60) days prior to June 30, 2020 or any subsequent anniversary day thereafter, either party gives written notice to the other of its desire to terminate or make changes in this contract.

Notwithstanding the above, the parties agree to re-open the contract to negotiate one (1) economic issue each per year, and two (2) non-economic issues, provided either party must deliver to the other, at least sixty (60) days prior to June 30, 2020 a notice of its desire to re-open the CBA.

APPENDIX A THC Bargaining Unit Classification and Rate of Pay Sheet

Job Title	Starting Hourly Pay Rate	Annualized Rate @ 1950 hours per year	No. of existing positions
Administrative Associate - Property Management	\$18.9460	\$36,944.68	2
Administrative Associate- Housing Services	\$18.9460	\$36,944.68	1
Office Coordinator- Housing Services	\$19.1133	\$37,270.89	1
Administrative Associate - Transitional Housing & Support Services	\$18.9460	\$36,944.68	1
Case Manager - Master Lease	\$20.1751	\$39,341.43	37
Case Manager - Shelter + Care & VASH	\$21.2133	\$41,365.93	13
Lead Rental Accounts Specialist	\$23.7774	\$46,365.93	1
Rental Accounts Specialist	\$21.2133	\$41,365.93	3
Housing Counselor	\$20.7058	\$40,376.30	5
Janitor	\$14.2354	\$27,758.98	42
Desk Clerk	\$14.2354	\$27,758.98	118
Senior Maintenance Worker	\$18.4076	\$35,894.89	3
Maintenance Worker	\$16.3370	\$31,857.22	27
Representative Payee	\$20.0123	\$39,024.08	5
Lead Community Organizer	\$21.0769	\$41,099.95	1
Organizing Program Associate- CCSRO	\$18.9460	\$36,944.82	1
Community Organizer- CCSRO	\$20.0000	\$39,000.00	1
Community Organizer-CEOP	\$20.0000	\$39,000.00	1
Community Organizer-MPP	\$20.0000	\$39,000.00	1
Community Organizer-LaVoz	\$19.2773	\$37,596.00	1
Housing Planning Specialist- Transitional Housing	\$21.2370	\$39,744.51	2
Housing Planning Specialist – Stabilization Program	\$21.2370	\$39,744.51	3

All bargaining unit positions are classified as non-exempt, according to FLSA guidelines.

Wage table reflects potential earnings for 37.5 hours per week, 52 weeks per year, 1950 work hours per year

Hourly non-exempt staff is paid for the number of hours worked in the pay period.

Service Employee International Union Local 1021

AND

Tenderloin Housing Clinic

Side Letter Agreement #1

Preserved for historical reference only: Part of July 1, 2012 – June 30, 2014 C.B.A.

The Union agrees that the elimination of the vacant desk clerk positions as identified by Employer to the Union will require a one-time permanent business need transfer of two employees. In addition, Employer agrees to follow **Article 6 Selection and Hiring; Section 3 Transfer Policy; D. Procedure for involuntary Transfers**. Due to this one-time permanent transfer, it is not subject to the two (2) month limitation or Labor/ Management Committee approval. Employer agrees to provide the Union with the names of the identified employees who are subject to the permanent transfer. Employer will provide a two (2) week notice prior to implementation of the identified transfers.

Meal periods that are “on-duty” are subject to State and Local laws, which include wage payment requirements for “on-duty” meal periods.

This agreement does not change or alter **Article 6 Selection and Hiring; Section 3 Transfer Policy**.

Service Employee International Union Local 1021

AND

Tenderloin Housing Clinic

Side Letter Agreement #2


Within 10 business days of receipt of information from THC's funder(s), the employer will contact the Union Field Representative and Bargaining Team to set up a meeting to provide information regarding any funds given to address staff affected by the San Francisco's planned minimum wage increase for July 01, 2018.


SIGNATURE PAGE


IN WITNESS THEREOF, the parties have hereto, by their authorized representatives, executed this Collective Bargaining Agreement:


**Service Employees International Union
(SEIU) Local 1021:**

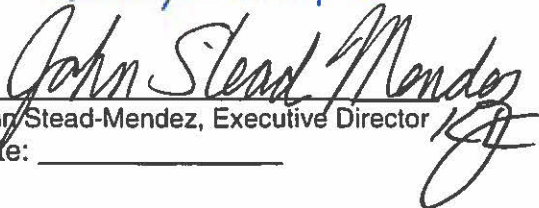

John Scott, Shop Steward
Date: 8/11/17


Nick Jenkins, Shop Steward
Date: _____



Neal Aneja, Bargaining Team Member
Date: 9/11/17


Andrea Pelous, Union Field Representative
Date: Aug 14, 2017



David Canham, Field Director
Date: 8.17.2017


John Stead-Mendez, Executive Director
Date: _____

**Tenderloin Housing Clinic, Inc.
(Employer):**


Jaime Quijano, Human Resources Director
Date: 8/14/17


Caroline Ittis, Human Resources Manager
Date: 8/14/17


Tabitha Allen, Deputy Director
Date: 8/14/17


Randy Shaw, Executive Director
Date: 8-14-17



Service Employees International Union – Local 1021
350 Rhode Island Street, Suite 100S
San Francisco, CA 94103
415-848-3611

Field Representative _____

Union Steward _____

Telephone Number _____

SHIRLEY C. WANG (SBN 187635)
swang@daviswanglaw.com

DAVIS WANG
625 Market Street, 12th Floor
San Francisco, California 94105
Telephone: (415) 278-1400
Facsimile: (415) 278-1401

Attorneys for Defendant
TENDERLOIN HOUSING CLINIC, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON FENNIX, individually, and on
behalf of all others similarly situation,

Plaintiff

v.

TENDERLOIN HOUSING CLINIC, INC.,
a California corporation; and DOES 1
through 10, inclusive

Defendants.

Case No.:

*[Removed from San Francisco Superior Court,
Case No. CGC-20-584834]*

**DECLARATION OF SHIRLEY WANG IN
SUPPORT OF DEFENDANT TENDERLOIN
HOUSING CLINIC, INC'S NOTICE OF
REMOVAL OF CIVIL ACTION TO U.S.
DISTRICT COURT**

Complaint Filed: June 9, 2020

DECLARATION OF SHIRLEY WANG

I, Shirley Wang, declare as follows:

1. I am the founder of the law firm Davis Wang, PLC, counsel for Defendant Tenderloin Housing Clinic, Inc. (“THC”) in the above captioned action. I am admitted to practice law in the State of California and the United States District Court for the Northern District of California. I have first-hand knowledge of the facts set forth herein and if called as a witness in this matter, could and would testify truthfully to those facts.

2. On or about June 9, 2020, Plaintiff Sharon Fennix (“Plaintiff”) commenced a civil lawsuit against THC in the Superior Court of California for the County of San Francisco entitled *Sharon Fennix v. Tenderloin Housing Clinic, Inc. et al.*, Case No CGC-20-584834. Copies of the Complaint, Summons, Civil Cover Sheet, Application for Complex Designation, Notice of Case Management Conference, and ADR Information Package were served on THC on June 29, 2020. Attached hereto as Exhibit 1 are true and correct copies of the Proof of Service, Complaint, Summons, Civil Cover Sheet, Application for Complex Designation, Notice of Case Management Conference, and ADR Information Package which Plaintiff served on THC on June 29, 2020.

3. Exhibit 1 hereto constitutes all “process, pleadings, and orders” filed thus far in this action, as required by 28 U.S.C. § 1446(a).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct to the best of my knowledge and belief and that this declaration was executed this 29th day of July, 2020 in San Francisco, California


By: 
Shirley Wang

EXHIBIT 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Kane Moon, SBN 249834 1055 W Seventh St Ste 1880 Los Angeles CA 90017		TELEPHONE NO. (213) 232-3128	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Francisco 07/07/2020 Clerk of the Court BY: NEYL WEBB Deputy Clerk	
ATTORNEY FOR (Name) Plaintiff				
Insert of Court Name of Judicial District and Branch Court if any SAN FRANCISCO COUNTY SUPERIOR COURT, SAN FRANCISCO				
SHORT TITLE OF CASE FENNIX v TENDERLOIN HOUSING				
3670190	(HEARING) Date	Time	Dept	Case Number: CGC20584834
				REFERENCE NO. Fennix v. Tenderloin Housing Clinic,

PROOF OF SERVICE OF SUMMONS

1. AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION

2. I SERVED COPIES OF THE:

SUMMONS & COMPLAINT

PLAINTIFF SHARON FENNIX'S APPLICATION FOR COMPLEX RESIGNATION;

CIVIL CASE COVER SHEET

NOTICE TO PLAINTIFF

ADR INFORMATION PACKAGE WITH BLANK STIPULATION

3. a. PARTY SERVED: TENDERLOIN HOUSING CLINIC, INC., a California corporation

b. Randy Shaw, Agent for Service

4. ADDRESS: 126 Hyde St
San Francisco CA 94102

5. I SERVED THE PARTY IN 3A BY SUBSTITUTED SERVICE

ON 6/29/2020 AT 4:18:00 PM

b. BY LEAVING THE DOCUMENTS LISTED IN 2 WITH OR IN THE PRESENCE OF:

ETHAN LAM, PERSON APPARENTLY IN CHARGE

CAUCASIAN MALE 20YRS 5'10" 165LBS. BROWN HAIR

(1) (BUSINESS) A PERSON AT LEAST 18 YEARS OF AGE APPARENTLY IN CHARGE AT THE OFFICE OR USUAL PLACE OF BUSINESS OF THE PERSON TO BE SERVED. I INFORMED HIM OR HER OF THE GENERAL NATURE OF THE PAPERS

(4) A DECLARATION OF MAILING IS ATTACHED IF REQUIRED

(5) A DECLARATION OF DILIGENCE IS ATTACHED IF REQUIRED

6. THE "NOTICE TO PERSON SERVED" WAS COMPLETED AS FOLLOWS:

d. ON BEHALF OF: TENDERLOIN HOUSING CLINIC, INC., a California corporation
Randy Shaw, Agent for Service

UNDER THE FOLLOWING CODE OF CIVIL PROCEDURE SECTION : 416.10 (CORPORATION)

7a. Person Serving: Christopher T. Tran

d. The fee for service was \$106.67

e. I am:

(1) not a registered California process server:

(3) X registered California process server:

(i) Independent Contractor

(i) Registration No: 2019-0001433

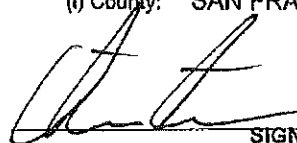
(i) County: SAN FRANCISCO

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

c. (714) 662-5555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Christopher T. Tran

7/2/2020



SIGNATURE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Kane Moon, SBN 249834 1055 W Seventh St Ste 1880 Los Angeles CA 90017 ATTORNEY FOR (Name) Plaintiff		TELEPHONE NO. (213) 232-3128	FOR COURT USE ONLY
Insert of Court Name of Judicial District and Branch Court if any SAN FRANCISCO COUNTY SUPERIOR COURT, SAN FRANCISCO			
SHORT TITLE OF CASE FENNIX v TENDERLOIN HOUSING			
3670190	(HEARING) Date	Time	Dept
Case Number: CGC20584834			
REFERENCE NO. Fennix v. Tenderloin Housing Clinic,			

PROOF OF SERVICE BY MAIL

1. I AM EMPLOYED IN, OR A RESIDENT OF, THE COUNTY IN WHICH THE MAILING OCCURED, AND NOT A PARTY TO THIS ACTION. AT THE TIME OF MAILING, I WAS AT LEAST 18 YEARS OF AGE OR OLDER

ON 06/30/2020

5. b (4) AFTER SUBSTITUTED SERVICE UNDER SECTION 415.20 (a) or 415.20 (b) or 415.46 C.C.P. WAS MADE. I SERVED THE WITHIN:

SUMMONS & COMPLAINT
PLAINTIFF SHARON FENNIX'S APPLICATION FOR COMPLEX RESIGNATION;
CIVIL CASE COVER SHEET
NOTICE TO PLAINTIFF
ADR INFORMATION PACKAGE WITH BLANK STIPULATION

ON THE DEFENDANT IN SAID ACTION BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON PREPAID FOR FIRST CLASS IN THE UNITED STATES MAIL AT: COSTA MESA, CALIFORNIA, ADDRESSED AS FOLLOWS:

TENDERLOIN HOUSING CLINIC, INC., a California
corporation
Randy Shaw, Agent for Service
126 Hyde St
San Francisco CA 94102

DECLARANT: MONICA FIGUEROA

d. The fee for service was \$106.67

e. I am:

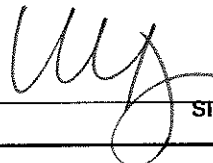
- (1) X not a registered California process server:
(3) registered California process server:
(i) Employee
(i) Registration No:
(i) County: Orange

b. DDS Legal Support
2900 Bristol St
Costa Mesa, Ca 92626

c. (714) 662-5555

8. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. MONICA FIGUEROA

7/2/2020



SIGNATURE

PROOF OF SERVICE

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

TENDERLOIN HOUSING CLINIC, INC., a California corporation; and
DOES 1 through 10, inclusive,

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SHARON FENNIX, individually, and on behalf of all others similarly
situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): San Francisco

400 McAllister Street
San Francisco, CA 94102

CASE 1
(Número de caso):

003-20-584834

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kane Moon, MOON & YANG APC, 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017 (213) 232-3128

DATE:
(Fecha)

JUN 17 2020

CLERK OF THE COURT,
(Secretario)

KALENE APOLONIO

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): TENDERLOIN HOUSING CLINIC, INC., a California corporation
under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
- ☐ by personal delivery on (date):

BY FAX

Page 1 of 1

1 Kane Moon (SBN 249834)
 2 Allen Feghali (SBN 301080)
MOON & YANG, APC
 1055 W. Seventh St., Suite 1880
 3 Los Angeles, California 90017
 Telephone: (213) 232-3128
 4 Facsimile: (213) 232-3125
 E-mail: kane.moon@moonyanglaw.com
 5 E-mail: allen.feghali@moonyanglaw.com

6 Attorneys for Plaintiff Sharon Fennix

**ENDORSED
FILED**
San Francisco County Superior Court

JUN 04 2020 *JS*

CLERK OF THE COURT
KALENE APOLONIO
 BY _____ Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 8 **FOR THE COUNTY OF SAN FRANCISCO**

9
 10 **SHARON FENNIX**, individually, and on behalf
 of all others similarly situated,

11 **Plaintiff,**

12
 13 vs.

14 **TENDERLOIN HOUSING CLINIC, INC.**, a
 15 California corporation; and **DOES 1** through **10**,
 inclusive,

16 **Defendants**

Case No. **CSC-20-584834**

CLASS ACTION COMPLAINT:

1. Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Indemnify Necessary Business Expenses [Cal. Lab. Code § 2802];
6. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
7. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
8. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].

DEMAND FOR JURY TRIAL

22
 23
 24
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 26
 27
 28
 BY FAX

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1 Plaintiff Sharon Fennix ("Plaintiff"), based upon facts that either have evidentiary support
 2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
 3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant Tenderloin Housing Clinic, Inc., and
 6 Does 1 through 10 (Tenderloin Housing Clinic, Inc., and Does 1 through 10 are collectively
 7 referred to as "Defendants") for California Labor Code violations and unfair business practices
 8 stemming from Defendants' failure to pay minimum and straight time wages, failure to pay
 9 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
 10 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
 11 wages to terminated employees, and failure to furnish accurate wage statements.

12 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
 13 class action on behalf of himself and certain current and former employees of Defendants
 14 (hereinafter collectively referred to as the "Class" or "Class Members" and defined more fully
 15 below). The Class consists of Plaintiff and all other persons who have been employed by any
 16 Defendants in California as an hourly-paid, non-exempt employee during the statute of limitations
 17 period applicable to the claims pleaded here.

18 3. Defendants own/owned and operate/operated an industry, business, and
 19 establishment within the State of California, including San Francisco County. As such, and based
 20 upon all the facts and circumstances incident to Defendants' business in California, Defendants
 21 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
 22 Commission ("IWC"), and the California Business & Professions Code.

23 4. Despite these requirements, throughout the statutory period Defendants
 24 maintained a systematic, company-wide policy and practice of:

- 25 (a) Failing to pay employees for all hours worked, including all minimum
 26 wages, straight time wages, and overtime wages in compliance with the
 27 California Labor Code and IWC Wage Orders;
 28

- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Failing to indemnify employees for necessary business expenses incurred;
- (e) Willfully failing to pay employees all minimum wages, straight time wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (f) Failing to maintain accurate records of the hours that employees worked.
- (g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

5. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

6. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

7. Plaintiff Sharon Fennix is a California resident who worked for Defendants in San Francisco County, California as a case manager from approximately October 2018 to September 2019.

8. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

9. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Tenderloin Housing Clinic, Inc. is:

- (a) A California corporation with its principal place of business in San Francisco, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in San Francisco County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Tenderloin Housing Clinic, Inc. suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions.

10. Plaintiff does not currently know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Class in the State of California.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff Sharon Fennix is a California resident who worked for Defendants in the County of San Francisco, State of California, as a case manager from approximately October 2018 to September 2019. At all times Defendants classified Plaintiff as non-exempt from California's overtime requirements. During the statutory period, Plaintiff was scheduled to work 5 days each workweek, and typically worked in excess of 8 hours each workday.

14. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked (including minimum wages, straight time wages, and overtime wages), failed to provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

15. Throughout the statutory period, Defendants regularly used a system of time rounding in a manner that results, over a period of time, in a failure to compensate Plaintiff and

1 the Class properly for all the time they actually worked, even though the realities of Defendants'
2 operations are such that it is possible, practical, and feasible to count and pay for every minute of
3 work performed. Due to Defendants' time rounding, Plaintiff and the Class are frequently paid
4 for less than all their work time.

5 16. Throughout the statutory period, Defendants have wrongfully failed to provide
6 Plaintiff and the Class with legally compliant meal periods. Defendants regularly, but not
7 always, required Plaintiff and the Class to work in excess of five consecutive hours a day without
8 providing 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of
9 work, or without compensating Plaintiff and the Class for meal periods that were not provided by
10 the end of the fifth hour of work or tenth hour of work. Defendants also did not adequately
11 inform Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of
12 work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover,
13 Defendants did not have adequate written policies or practices providing meal periods for
14 Plaintiff and the Class, nor did Defendants have adequate policies or practices regarding the
15 timing of meal periods. Accordingly, Defendants' policy and practice was to not provide meal
16 periods to Plaintiff and the Class in compliance with California law.

17 17. Throughout the statutory period, Defendants have wrongfully failed to authorize
18 and permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants
19 regularly, but not always, required Plaintiff and the Class to work in excess of four consecutive
20 hours a day without Defendants authorizing and permitting them to take a 10-minute, continuous
21 and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
22 without compensating Plaintiff and the Class for rest periods that were not authorized or
23 permitted. Indeed, Defendants required Plaintiff and the Class to work in lieu of taking 10-
24 minute, paid, duty-free rest periods because there was too much work to do. Defendants also did
25 not adequately inform Plaintiff and the Class of their right to take a rest period. Moreover,
26 Defendants did not have adequate policies or practices permitting or authorizing rest periods for
27 Plaintiff and the Class, nor did Defendants have adequate policies or practices regarding the
28 timing of rest periods. Defendants also did not have adequate policies or practices to verify

1 whether Plaintiff and the Class were taking their required rest periods. Further, Defendants did
2 not maintain accurate records of employee work periods, and therefore Defendants cannot
3 demonstrate that Plaintiff and the Class took rest periods during the middle of each work period.
4 Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the
5 Class to take rest periods in compliance with California law.

6 18. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
7 Class to pay expenses that they incurred in direct discharge of their duties for Defendants without
8 reimbursement. This included the use of their own vehicles, which mileage and any other related
9 expenses were not reimbursed. Plaintiff and the Class incurred these substantial expenses as a
10 direct result of performing their job duties for Defendants, and Defendants have failed to
11 indemnify Plaintiff and the Class for these employment-related expenses.

12 19. Throughout the statutory period, Defendants willfully failed and refused to timely
13 pay Plaintiff and the Class at the conclusion of their employment all wages for all minimum
14 wages, straight time wages, overtime wages, meal period premium wages, and rest period
15 premium wages. This included the failure to pay the final paycheck at the time of termination.

16 20. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
17 Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
18 and net wages earned (including correct hours worked, correct wages earned for hours worked,
19 correct overtime hours worked, correct wages for meal periods that were not provided in
20 accordance with California law, correct wages for rest periods that were not authorized and
21 permitted to take in accordance with California law, and Defendant's address). As a result of
22 these violations of California Labor Code § 226(a), the Plaintiff and the Class suffered injury
23 because, among other things:

- 24 (a) the violations led them to believe that they were not entitled to be paid
25 minimum wages, overtime wages, meal period premium wages, and rest
26 period premium wages to which they were entitled, even though they were
27 entitled;
28

- 1 (b) the violations led them to believe that they had been paid the minimum,
- 2 overtime, meal period premium, and rest period premium wages, even
- 3 though they had not been;
- 4 (c) the violations led them to believe they were not entitled to be paid
- 5 minimum, overtime, meal period premium, and rest period premium wages
- 6 at the correct California rate even though they were;
- 7 (d) the violations led them to believe they had been paid minimum, overtime,
- 8 meal period premium, and rest period premium wages at the correct
- 9 California rate even though they had not been;
- 10 (e) the violations hindered them from determining the amounts of minimum,
- 11 overtime, meal period premium, and rest period premium owed to them;
- 12 (f) in connection with their employment before and during this action, and in
- 13 connection with prosecuting this action, the violations caused them to have
- 14 to perform mathematical computations to determine the amounts of wages
- 15 owed to them, computations they would not have to make if the wage
- 16 statements contained the required accurate information;
- 17 (g) by understating the wages truly due them, the violations caused them to
- 18 lose entitlement and/or accrual of the full amount of Social Security,
- 19 disability, unemployment, and other governmental benefits;
- 20 (h) the wage statements inaccurately understated the wages, hours, and wages
- 21 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
- 22 Class were paid less than the wages and wage rates to which they were
- 23 entitled.

24 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
 25 226(e), including actual damages.

26 **CLASS ACTION ALLEGATIONS**

27 21. Plaintiff brings certain claims individually, as well as on behalf of each and all
 28 other persons similarly situated, and thus, seek class certification under California Code of Civil

1 Procedure § 382.

2 22. All claims alleged herein arise under California law for which Plaintiff seeks relief
3 authorized by California law.

4 23. The proposed Class consists of and is defined as:

5 All persons who worked for any Defendant in California as an hourly paid, non-
6 exempt employee, at any time during the period beginning four years before the
7 filing of the initial complaint in this action.

8 24. At all material times, Plaintiff was a member of the Class.

9 25. Plaintiff undertakes this concerted activity to improve the wages and working
10 conditions of all Class Members.

11 26. There is a well-defined community of interest in the litigation and the Class is
12 readily ascertainable:

13 (a) Numerosity: The members of the Class (and each subclass, if any) are so
14 numerous that joinder of all members would be unfeasible and impractical.
15 The membership of the entire Class is unknown to Plaintiff at this time,
16 however, the Class is estimated to be greater than 100 individuals and the
17 identity of such membership is readily ascertainable by inspection of
18 Defendants' records.

19 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
20 the interests of each Class Member with whom there is a shared, well-
21 defined community of interest, and Plaintiff's claims (or defenses, if any)
22 are typical of all Class Members' claims as demonstrated herein.

23 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
24 the interests of each Class Member with whom there is a shared, well-
25 defined community of interest and typicality of claims, as demonstrated
26 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
27 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
28 the rules governing class action discovery, certification, and settlement.

Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;
- 2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;
- 3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- 4) The difficulties likely to be encountered in the management of a class action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the California Labor Code claims of many employees through a class action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

27. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

- (a) Failed to pay Class Members for all hours worked, including minimum wages, straight time wages, and overtime wages;
- (b) Failed to provide meal periods and pay meal period premium wages to Class Members;
- (c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members;
- (d) Failed to promptly pay all wages due to Class Members upon their discharge or resignation;
- (e) Failed to maintain accurate records of all hours Class Members worked, and all meal periods Class Members took or missed;
- (f) Failed to reimburse Class Members for all necessary business expenses; and
- (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a result of their illegal conduct as described above.

28. This Court should permit this action to be maintained as a class action pursuant to California Code of Civil Procedure § 382 because:

- (a) The questions of law and fact common to the Class predominate over any question affecting only individual members;
- (b) A class action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;
- (c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;
- (d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are

responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or
- 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

29. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff would contemplate the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against all Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

30. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

1 31. “Hours worked” is the time during which an employee is subject to the control of
2 an employer, and includes all the time the employee is suffered or permitted to work, whether or
3 not required to do so.

4 32. At all relevant times herein mentioned, Defendants knowingly failed to pay to
5 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
6 compensation for each hour worked as alleged above, Defendants willfully violated the
7 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
8 Orders, which require such compensation to non-exempt employees.

9 33. Accordingly, Plaintiff and the Class are entitled to recover minimum and straight
10 time wages for all non-overtime hours worked for Defendants.

11 34. By and through the conduct described above, Plaintiff and the Class have been
12 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

13 35. By virtue of the Defendants’ unlawful failure to pay additional compensation to
14 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
15 suffered, and will continue to suffer, damages in amounts which are presently unknown to
16 Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which
17 will be ascertained according to proof at trial.

18 36. By failing to keep adequate time records required by California Labor Code §
19 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
20 compensation due Plaintiff and the Class.

21 37. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
22 entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum
23 wages.

24 38. California Labor Code section 204 requires employers to provide employees with
25 all wages due and payable twice a month. Throughout the statute of limitations period applicable
26 to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates
27 required by law, including minimum and straight time wages. However, during all such times,
28

1 Defendants systematically failed and refused to pay Plaintiff and the Class all such wages due,
2 and failed to pay those wages twice a month.

3 39. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
4 and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to California
5 Labor Code §§ 218.5, 218.6, and 1194(a).

6 **SECOND CAUSE OF ACTION**

7 **(Against all Defendants for Failure to Pay Overtime Wages)**

8 40. Plaintiff incorporates by reference and re-alleges as if fully stated herein
9 paragraphs 1 through 20 in this Complaint.

10 41. California Labor Code § 510 provides that employees in California shall not be
11 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
12 they receive additional compensation beyond their regular wages in amounts specified by law.

13 42. California Labor Code §§ 1194 and 1198 provide that employees in California
14 shall not be employed more than eight hours in any workday unless they receive additional
15 compensation beyond their regular wages in amounts specified by law. Additionally, California
16 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
17 by the Industrial Welfare Commission is unlawful.

18 43. At all times relevant hereto, Plaintiff and the Class have worked more than eight
19 hours in a workday, as employees of Defendants.

20 44. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
21 overtime compensation for the hours they have worked in excess of the maximum hours
22 permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class
23 are regularly required to work overtime hours.

24 45. By virtue of Defendants' unlawful failure to pay additional premium rate
25 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
26 Class have suffered, and will continue to suffer, damages in amounts which are presently
27 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
28 ascertained according to proof at trial.

46. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class.

47. Plaintiff and the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

48. California Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class with all compensation due, in violation of California Labor Code § 204.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

49. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

50. Under California law, Defendants have an affirmative obligation to relieve the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. Section 512 of the California Labor Code, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a violation of Section 226.7 of the California Labor Code for an employer to require any employee to work during any meal period mandated under any Wage Order.

51. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the Class with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods),

1 Defendants willfully violated the provisions of Section 226.7 of the California Labor Code and
2 the applicable Wage Orders.

3 52. Under California law, Plaintiff and the Class are entitled to be paid one hour of
4 additional wages for each workday he or she was not provided with all required meal period(s),
5 plus interest thereon.

6 **FOURTH CAUSE OF ACTION**

7 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

8 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein
9 paragraphs 1 through 20 in this Complaint.

10 54. Defendants are required by California law to authorize and permit breaks of 10
11 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
12 two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that
13 the employer permit and authorize all employees to take paid rest periods of 10 minutes each for
14 each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten
15 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
16 required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of
17 the California Labor Code for an employer to require any employee to work during any rest
18 period mandated under any Wage Order.

19 55. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
20 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
21 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
22 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
23 these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of
24 the California Labor Code and the applicable Wage Orders.

25 56. Under California law, Plaintiff and the Class are entitled to be paid one hour of
26 premium wages rate for each workday he or she was not provided with all required rest break(s),
27 plus interest thereon.
28

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Indemnify Necessary Business Expenses)

57. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

58. Defendants violated Labor Code section 2802 and the IWC Wage Orders, by failing to pay and indemnify the Plaintiff and the Class for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendants.

59. As a result, Plaintiff and the Class were damaged at least in the amounts of the expenses they paid, or which were deducted by Defendants from their wages.

60. Plaintiff and the class they represent are entitled to attorney's fees, expenses, and costs of suit pursuant to Labor Code section 2802(c) and interest pursuant to Labor Code section 2802(b).

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

61. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

62. At all times herein set forth, California Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

63. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be

1 paid by California Labor Code sections 201 and 202 either at the time of discharge, or within
2 seventy-two (72) hours of their leaving Defendants' employ.

3 64. Defendants' failure to pay Plaintiff and those Class members who are no longer
4 employed by Defendants their wages earned and unpaid at the time of discharge, or within
5 seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor
6 Code §§ 201 and 202.

7 65. California Labor Code § 203 provides that if an employer willfully fails to pay
8 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
9 continue as a penalty wage from the due date, and at the same rate until paid or until an action is
10 commenced; but the wages shall not continue for more than thirty (30) days.

11 66. Plaintiff and the Class are entitled to recover from Defendants their additionally
12 accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
13 maximum pursuant to California Labor Code § 203.

14 67. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the
15 Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs
16 incurred in this action.

17 **SEVENTH CAUSE OF ACTION**

18 **(Against all Defendants for Failure to Provide and Maintain Accurate and** 19 **Compliant Wage Records)**

20 68. Plaintiff incorporates by reference and re-alleges as if fully stated herein
21 paragraphs 1 through 20 in this Complaint.

22 69. At all material times set forth herein, California Labor Code § 226(a) provides that
23 every employer shall furnish each of his or her employees an accurate itemized wage statement
24 in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours
25 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate
26 if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
27 on written orders of the employee may be aggregated and shown as one item, (5) net wages
28 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the

1 employee and the last four digits of his or her social security number or an employee
2 identification number other than a social security number, (8) the name and address of the legal
3 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked at each hourly rate by the employee.

5 70. Defendants have intentionally and willfully failed to provide employees with
6 complete and accurate wage statements. The deficiencies include, among other things, the
7 failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list
8 the true "total hours worked by the employee," and the failure to list the true net wages earned.

9 71. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff
10 and the Class have suffered injury and damage to their statutorily-protected rights.

11 72. Specifically, Plaintiff and the members of the Class have been injured by
12 Defendants' intentional violation of California Labor Code § 226(a) because they were denied
13 both their legal right to receive, and their protected interest in receiving, accurate, itemized wage
14 statements under California Labor Code § 226(a).

15 73. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and
16 time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as
17 a result of having to bring this action to attempt to obtain correct wage information following
18 Defendants' refusal to comply with many of the mandates of California's Labor Code and related
19 laws and regulations.

20 74. Plaintiff and the Class are entitled to recover from Defendants their actual
21 damages caused by Defendants' failure to comply with California Labor Code § 226(a).

22 75. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of
23 attorney's fees and costs to ensure compliance with this section, pursuant to California Labor
24 Code § 226(h).

EIGHTH CAUSE OF ACTION

(Against all Defendants for Violation of California Business & Professions Code §§ 17200, et seq.)

76. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 20 in this Complaint.

77. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

78. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

79. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, *et seq.*

80. A violation of California Business & Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Minimum and Straight Time Wages

81. Defendants’ failure to pay minimum wages, straight time wages, and other benefits in violation of the California Labor Code constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Pay Overtime Wages

82. Defendants’ failure to pay overtime compensation and other benefits in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Maintain Accurate Records of All Hours Worked

83. Defendants' failure to maintain accurate records of all hours worked in accordance with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Provide Meal Periods

84. Defendants' failure to provide meal periods in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

Failure to Authorize and Permit Rest Periods

85. Defendants' failure to authorize and permit rest periods in accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Indemnify Necessary Business Expenses

86. Defendants' failure to indemnify employees for necessary business expenses in accordance with California Labor Code § 2802 and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

Failure to Provide Accurate Itemized Wage Statements

87. Defendants' failure to provide accurate itemized wage statements in accordance with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

88. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

89. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

90. Plaintiff, individually, and on behalf of members of the putative Class, is entitled

1 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
2 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
3 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
4 the Class are not obligated to establish individual knowledge of the wrongful practices of
5 Defendants in order to recover restitution.

6 91. Plaintiff, individually, and on behalf of members of the putative class, are further
7 entitled to and do seek a declaration that the above described business practices are unfair,
8 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
9 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
10 practices in the future.

11 92. Plaintiff, individually, and on behalf of members of the putative class, have no
12 plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members
13 suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business
14 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
15 above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and
16 will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained
17 from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

18 93. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth
19 herein above, they will continue to avoid paying the appropriate taxes, insurance and other
20 withholdings.

21 94. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff
22 and putative Class Members are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure §
26 1021.5 and other applicable laws; and an award of costs.

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action with respect to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes of Action;
2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

4. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For general unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;
11. For general unpaid wages at overtime wage rates as may be appropriate;
12. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to

1 California Labor Code § 1194(a); and,

2 14. For such other and further relief as the Court may deem equitable and appropriate.

3 As to the Third Cause of Action

4 15. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

6 16. For unpaid meal period premium wages as may be appropriate;

7 17. For pre-judgment interest on any unpaid compensation commencing from the date
8 such amounts were due;

9 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
10 and for costs of suit incurred herein; and

11 19. For such other and further relief as the Court may deem equitable and appropriate.

12 As to the Fourth Cause of Action

13 20. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

15 21. For unpaid rest period premium wages as may be appropriate;

16 22. For pre-judgment interest on any unpaid compensation commencing from the date
17 such amounts were due;

18 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
19 and for costs of suit incurred herein; and

20 24. For such other and further relief as the Court may deem equitable and appropriate.

21
22
23 As to the Fifth Cause of Action

24 25. That the Court declare, adjudge and decree that Defendants violated Labor Code §
25 2802 and the IWC Wage Orders;

26 26. For general unpaid wages and reimbursement of business expenses as may be
27 appropriate;

1 27. For pre-judgment interest on any unpaid compensation commencing from the date
2 such amounts were due;

3 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

4 29. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Sixth Cause of Action

6 30. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
8 termination of the employment;

9 31. For statutory wage penalties pursuant to California Labor Code § 203 for former
10 employees who have left Defendants' employ;

11 32. For pre-judgment interest on any unpaid wages from the date such amounts were
12 due;

13 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

14 34. For such other and further relief as the Court may deem equitable and appropriate.

15 As to the Seventh Cause of Action

16 35. That the Court declare, adjudge and decree that Defendants violated the record
17 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
18 willfully failed to provide accurate itemized wage statements thereto;

19 36. For penalties and actual damages pursuant to California Labor Code § 226(e);

20 37. For injunctive relief to ensure compliance with this section, pursuant to California
21 Labor Code § 226(h);

22 38. For reasonable attorneys' fees and for costs of suit incurred herein; and

23 39. For such other and further relief as the Court may deem equitable and appropriate.

24 As to the Eighth Cause of Action

25 40. That the Court declare, adjudge and decree that Defendants violated California
26 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
27 (including minimum, straight time, and overtime wages), failing to provide meal periods, failing
28 to maintain accurate records of meal periods, failing to authorize and permit rest periods, and

1 failing to maintain accurate records of all hours worked and meal periods, failing to furnish
2 accurate wage statements, and failing to indemnify necessary business expenses;

3 41. For restitution of unpaid wages to Plaintiff and all Class Members and
4 prejudgment interest from the day such amounts were due and payable;

5 42. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

8 43. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Code of Civil Procedure § 1021.5;

10 44. For injunctive relief to ensure compliance with this section, pursuant to California
11 Business & Professions Code §§ 17200, *et seq.*; and,

12 45. For such other and further relief as the Court may deem equitable and appropriate.

13 As to all Causes of Action

14 46. For any additional relief that the Court deems just and proper.

15
16 Dated: June 8, 2020

Respectfully submitted,

17 MOON & YANG, APC

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19 By: 

Kane Moon
Allen Feghali
Attorneys for Plaintiff

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21
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a trial by jury as to all causes of action triable by jury.

24
25 Dated: June 8, 2020

MOON & YANG, APC

26
27 By: 

Kane Moon
Allen Feghali
Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kane Moon (SBN 249834), Allen Feghall (SBN 301080) MOON & YANG APC 1055 W. 7th Street, Suite 1880 Los Angeles, CA 90017 TELEPHONE NO.: 213-232-3128 FAX NO.: 213-232-3125 ATTORNEY FOR (Name): Plaintiff: Sharon Fennix		FOR COURT USE ONLY ENDORSED FILED <i>San Francisco County Superior Court</i> JUN 09 2020 CLERK OF THE COURT BY: KALENE APOLONIO <i>Deputy Clerk</i>						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: San Francisco Superior Court								
CASE NAME: Fennix v. Tenderloin Housing Clinic, Inc.								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">CIVIL CASE COVER SHEET</td> </tr> <tr> <td style="width: 50%; padding: 5px;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 50%; padding: 5px;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> </tr> </table>			CIVIL CASE COVER SHEET		<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		
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Complex Case Designation								
<input type="checkbox"/> Counter	<input type="checkbox"/> Joinder							
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)								
JUDGE: 		DEPT.:						

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case.
- | | | |
|---|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (18)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input checked="" type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): 8
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 6/8/2020

Kane Moon

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) <i>(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)</i>	Breach of Rental/Lease Contract <i>(not unlawful detainer or wrongful eviction)</i>	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff <i>(not fraud or negligence)</i>	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos (04)	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims <i>(arising from provisionally complex case type listed above)</i> (41)
Asbestos Property Damage	Collection Case—Seller Plaintiff	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Product Liability <i>(not asbestos or toxic/environmental)</i> (24)	Insurance Coverage <i>(not provisionally complex)</i> (18)	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Auto Subrogation	Confession of Judgment <i>(non-domestic relations)</i>
Medical Malpractice—Physicians & Surgeons	Other Coverage	Sister State Judgment
Other Professional Health Care Malpractice	Other Contract (37)	Administrative Agency Award <i>(not unpaid taxes)</i>
Other PI/PD/WD (23)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Other Contract Dispute	Other Enforcement of Judgment Case
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Real Property	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Negligent Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint <i>(not specified above)</i> (42)
Other PI/PD/WD	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Non-PI/PD/WD (Other) Tort	Writ of Possession of Real Property	Injunctive Relief Only <i>(non-harassment)</i>
Business Tort/Unfair Business Practice (07)	Mortgage Foreclosure	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) <i>(not civil harassment)</i> (08)	Quiet Title	Other Commercial Complaint Case <i>(non-tort/non-complex)</i>
Defamation (e.g., slander, libel) (13)	Other Real Property <i>(not eminent domain, landlord/tenant, or foreclosure)</i>	Other Civil Complaint <i>(non-tort/non-complex)</i>
Fraud (16)	Unlawful Detainer	Miscellaneous Civil Petition
Intellectual Property (19)	Commercial (31)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Residential (32)	Other Petition <i>(not specified above)</i> (43)
Legal Malpractice	Drugs (38) <i>(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)</i>	Civil Harassment
Other Professional Malpractice <i>(not medical or legal)</i>	Judicial Review	Workplace Violence
Other Non-PI/PD/WD Tort (35)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Employment	Petition Re: Arbitration Award (11)	Election Contest
Wrongful Termination (36)	Writ of Mandate (02)	Petition for Name Change
Other Employment (15)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor Commissioner Appeals	

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E-mail: kane.moon@moonyanglaw.com
E-mail: allen.feghali@moonyanglaw.com

Attorneys for Plaintiff Sharon Fennix

**ENDORSED
FILED**
San Francisco County Superior Court

JUN 09 2020

CLERK OF THE COURT
KALENE APOLONIO
BY: _____ Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

SHARON FENNIX, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

TENDERLOIN HOUSING CLINIC, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.:

CBC-20-584834

**PLAINTIFF SHARON FENNIX'S
APPLICATION FOR COMPLEX
DESIGNATION**

Plaintiff Sharon Fennix, individually, and on behalf of all others similarly situated, hereby
submits the following application for complex designation. This action should be assigned to the
Complex Litigation Department in accordance with the factors set forth in California Rule of
Court 3.400 et seq. for the reasons set forth below.

BY FAX

BY FAX

1. Class Action Provisional Designation As Complex Case

Plaintiff's action is a putative class action and is thus entitled to provisional designation as a complex case within the meaning of California Rule of Court 3.400(c). Per the Court's request, a copy of the putative class action complaint is attached hereto as Exhibit "A", and Plaintiff has previously paid the complex filing fee.

2. Numerous Pretrial Motions Raising Difficult Or Novel Legal Issues That Will Be Time-Consuming To Resolve

Plaintiff was employed by Defendant as a non-exempt hourly-paid employee. While employed by Defendant, Plaintiff alleges that Defendant regularly used a system of time rounding in a manner that resulted, over a period of time, in a failure to compensate Plaintiff and the Class properly for all the time they actually worked, even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for every minute of work performed. Plaintiff further alleges she and the Putative Class were not provided with Labor Code-compliant meal and rest periods. Plaintiff further contends there is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. Plaintiff contends there exists questions of law and fact common to the Class that predominate over questions that may affect individual class members, including common questions arising from Defendant's overtime pay policy and practices.

In light of these allegations, Plaintiff anticipates the need for a difficult and time-consuming precertification and pretrial motion to compel discovery of names and contact information for putative class members, and anticipates Court required supervision of the release of putative class member contact information in accordance with the discovery notice and opt-out contact information release procedures set forth in Belaire-West Landscape, Inc. v. Superior Court, 149 Cal. App. 4th 554 (2007). Plaintiff anticipates the need for a difficult and time consuming pre-trial motion for class certification based upon a well-defined community of interest in questions of law and fact common to the putative class arising from Defendant's overtime pay, meal and rest period practices and policies giving rise to predominate common questions of law and fact. Plaintiff further alleges that she and the class were not paid all wages

owed at the time their employment with Defendant ended and that they were not provided with accurate wage statements. Plaintiff further anticipates a difficult and time-consuming pre-trial motion for decertification filed by Defendant in the event Plaintiff's request for class certification is granted.

3. Management Of A Large Number Of Witnesses Or A Substantial Amount Of Documentary Evidence

Plaintiff anticipates a substantial number of documents to be produced and analyzed regarding Defendant's overtime pay policies and actual non-payment of all wages owed to individual class members. Specifically, Plaintiff anticipates production and analysis of all time and payroll records for hundreds or thousands of employees. Plaintiff further anticipates collecting declarations from these individuals, and deposing individuals from whom Defendant obtains declarations.

4. Substantial Postjudgment Judicial Supervision

Plaintiff anticipates the need for substantial post-class certification supervision of class notice and opt-out procedures, and the potential need for post-certification Court approved class settlement procedures, including procedures regarding class notice, fairness objection, and opt-out procedures. Plaintiff anticipates the need for substantial post-judgment Court supervision pertaining to claims administration and distribution of class damages to class members located throughout California.

5. Conclusion

Based on the foregoing, Plaintiff respectfully requests that this matter be deemed complex.

Dated: June 8, 2020

Respectfully submitted,

MOON & YANG, APC

By: 

Kane Moon
Allen Feghali
Attorneys for Plaintiff

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: NOV-18-2020

TIME: 10:30AM

**PLACE: Department 610
400 McAllister Street
San Francisco, CA 94102-3680**

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed, served and lodged in Department 610 twenty-five (25) days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE SHOULD PARTICIPATE IN MEDIATION, ARBITRATION, NEUTRAL EVALUATION, AN EARLY SETTLEMENT CONFERENCE, OR OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.

(SEE LOCAL RULE 4)

Plaintiff **must** serve a copy of the Alternative Dispute Resolution (ADR) Information Package on each defendant along with the complaint. (CRC 3.221.) The ADR package may be accessed at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution or you may request a paper copy from the filing clerk. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the ADR Information Package prior to filing the Case Management Statement.

**Superior Court Alternative Dispute Resolution Administrator
400 McAllister Street, Room 103-A
San Francisco, CA 94102
(415) 551-3869**

See Local Rules 3.3, 6.0 C and 10 B re stipulation to Judge pro tem.



Superior Court of California, County of San Francisco Alternative Dispute Resolution Information Package



The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action together with the cross-complaint. (CRC 3.221(c).)

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to trial.

WHY CHOOSE ADR?

It is the policy of the Superior Court that every long cause, non-criminal, non-juvenile case should participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial. (Local Rule 4.)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

****Electing to participate in an ADR process does not stop the time period to respond to a complaint or cross-complaint****

WHAT ARE THE ADR OPTIONS?

The San Francisco Superior Court offers different types of ADR processes for general civil matters. The programs are described below:

1) MANDATORY SETTLEMENT CONFERENCES

Settlement conferences are appropriate in any case where settlement is an option. The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute. Mandatory settlement conferences are ordered by the court and are often held near the date a case is set for trial, although they may be held earlier if appropriate. A party may elect to apply to the Presiding Judge for a specially set mandatory settlement conference by filing an ex parte application. See Local Rule 5.0 for further instructions. Upon approval by the Presiding Judge, the court will schedule the conference and assign a settlement conference officer.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF), in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending. Experienced professional mediators work with parties to arrive at a mutually agreeable solution. The mediators provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. BASF staff handles conflict checks and full case management. The success rate for the program is 67% and the satisfaction rate is 99%. BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the fee are available to those who qualify. For more information, call 415-982-1600 or email adr@sfbar.org.

(B) JUDICIAL MEDIATION PROGRAM provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at any time throughout the litigation process. Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge. Information about the Judicial Mediation Program may be found by visiting the ADR page on the court's website: www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may select any private mediator of their choice. The selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

(D) COMMUNITY BOARDS MEDIATION SERVICES: Mediation services are offered by Community Boards (CB), a nonprofit resolution center, under the Dispute Resolution Programs Act. CB utilizes a three-person panel mediation process in which mediators work as a team to assist the parties in reaching a shared solution. To the extent possible, mediators are selected to reflect the demographics of the disputants. CB has a success rate of 85% for parties reaching a resolution and a consumer satisfaction rate of 99%. The fee is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available. For more information, call 415-920-3820 or visit communityboards.org.

3) ARBITRATION

An arbitrator is a neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION

When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.1 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after being assigned to judicial arbitration. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION

Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's or court-affiliated ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet and available on the court's website); or
- Indicating your ADR preferences on the Case Management Statement (available on the court's website); or
- Contacting the court's ADR Department (see below), the Bar Association of San Francisco's ADR Services, or Community Boards.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103-A, San Francisco, CA 94102
415-551-3869

Or, visit the court's ADR page at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE AND FILE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF OR COMMUNITY BOARDS TO ENROLL IN THEIR LISTED PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF OR COMMUNITY BOARDS.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address)	FOR COURT USE ONLY
TELEPHONE NO	
ATTORNEY FOR (Name).	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER:	
DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: _____ DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- ☐ **Mediation Services of the Bar Association of San Francisco (BASF)** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbars.org/mediation
- ☐ **Mediation Services of Community Boards (CB)** - Service in conjunction with DRPA, CB provides case development and one three-hour mediation session. Additional sessions may be scheduled. The cost is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available to those who qualify. communityboards.org
- ☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- ☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution
- ☐ **Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) _____

☐ **Other ADR process (describe)** _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

Dated: _____

Dated: _____

☐ Additional signature(s) attached

SHIRLEY C. WANG (SBN 187635)
swang@daviswanglaw.com

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625 Market Street, 12th Floor
San Francisco, California 94105
Telephone: (415) 278-1400
Facsimile: (415) 278-1401

Attorneys for Defendant
TENDERLOIN HOUSING CLINIC, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHARON FENNIX, individually, and on
behalf of all others similarly situation,

Plaintiff

v.

TENDERLOIN HOUSING CLINIC, INC.,
a California corporation; and DOES 1
through 10, inclusive

Defendants.

Case No.:

**DEFENDANT TENDERLOIN HOUSING
CLINIC, INC.'S CORPORATE
DISCLOSURE STATEMENT AND
CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS**

[Federal Rule of Civil Procedure 7.1 and Civil
Local Rule 3-15]

1 Defendant Tenderloin Housing Clinic, Inc. does not have a parent corporation and there is no
2 publicly held corporation that owns 10% or more of its stock.

3 Pursuant to Civil Local Rule 3-15, the undersigned certifies that as of this date, other than the
4 named parties, there is no such interest to report.

5 Dated: July 29, 2020

DAVIS WANG

6
7 By: 

8 Shirley C. Wang
9 Attorneys for Defendant Tenderloin Housing Clinic,
10 Inc.
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Davis Wang

A Professional Law Corporation

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